

Las Siete Partidas



VOLUME FOUR

FAMILY, COMMERCE, AND THE SEA:
THE WORLDS OF WOMEN
AND MERCHANTS

TRANSLATED BY Samuel Parsons Scott
EDITED BY Robert I. Burns, S.J.

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L A S S I E T E P A R T I D A S

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Family, Commerce, and the Sea

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The Worlds of Women and Merchants

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PENN

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INTRODUCTION TO THE FOURTH PARTIDA

In his introduction to the fourth *partida* of his massive law code, Alfonso recalls that he had dealt in the first book with the “Spiritual Sword” or religious matters, in the second with the “Temporal Sword” or kingly governance, and in the third with justice that secures to every person “his rights through legal compulsion.” At this point the reader of the lively essays that comprise Alfonso’s legal masterwork expects the pace to slacken and lesser topics to occupy the relatively short concluding books. After all, the halfway mark has long been passed, over 870 of a total 1,484 pages in this translation. The cosmic topics of this world and the next, including the medieval king’s preeminent obligations of justice and defense, have already been amply addressed. And the remaining *partidas* will have to double up, combining two shorter *partidas* in each volume of the present edition, in order to balance the first three volumes in the set, each of which had constituted one full-bodied *partida*.

Alfonso informs us that we are badly mistaken. He has deliberately saved his most important topic for this fourth *partida*. He does not put its subject, matrimony, in competition with religion and governance, so much as make it the dynamic energy and mystical framework for all human experience. As such, marriage is also the purposeful centerpiece of the entire code of seven *partidas*, the keystone supporting its intricate architecture. In his study of this phenomenon, Joaquín Gimeno Casaldüero contrasts its legal vision with the contemporary canon law of the papal *Decretales* where marriage logically and prosaically follows the topic of contracts, being itself essentially a contract in form. For Alfonso marriage “is one of the noblest and most honorable of the seven sacraments of the holy church,” chronologically the first of them “ordained by God himself in paradise,” as well as the source of “a regular life and one free from sin,” without which “the other six sacraments can neither be maintained or observed.” For this reason, he says, “we have placed it in the middle” of the code, with three *partidas* on either side, just as the heart holds man’s spirit in his middle, or as the sun is “in the middle of the seven heavens” and seven planets. He returns again to the image of the sun “in the fourth heaven” to explain the structure of the whole code as dependent on this fourth book.

Of all the gifts God gave man, “he showed him especially great distinction by creating a woman whom he gave him as a companion”; and God arranged “that while their bodies were different according to nature, they should be one, so far as love was concerned, so that they could not be divided.” And “from this affection offspring might be born” to people the world. As will be seen below, Alfonso does not conceive such marriage as a nuclear couple with children; he sees instead ever widening ripples of familial community, from domestic and the household to the religious and in some serious ways the political. The vital and vivifying center, however, is the nuclear family.¹

THE MARRIAGE REVOLUTION

Marriage itself was undergoing radical changes in Europe during Alfonso’s generation. His *Partidas* both mirrored these changes and accelerated them. Marriage

1. See the analysis in depth by Joaquín Gimeno Casaldüero, “Alfonso el Sabio: el matrimonio y la composición de las *Partidas*,” *Nueva revista de filología hispánica* 36 (1988): 203–18.

was the only sacrament which the protagonists in the Western church conferred on each other; its essence did not require a cleric, a church, or a ceremony. Without clear witnesses it was difficult sometimes to distinguish marriage from concubinage or from open-ended arrangements. Families had always claimed a role, even a defining role, of course, in setting up their children's marriages. The church claimed control over the sacrament but until recently had not fully worked out its definitions and prerogatives. The newly urbanized Europe of the twelfth and thirteenth centuries, with its explosive advancements in political, economic, and religious spheres, unleashed its academics on the task of creating a reasoned theology and canon law of marriage, while popes and councils authorized and imposed the emerging consensus.

By that consensus, two competing actions equally defined the essentials of a marriage: either the voluntary exchange of vows "in the present" by the two principals, or alternatively a voluntary solemn promise ("betrothal vows") to marry "in the future," a union completed and rendered fully indissoluble by an act of sexual intercourse. By Alfonso's time it was standard doctrine that free choice not only was at the heart of marriage but was its essence. No arrangements the parents might impose, no force or psychological pressure, could violate that freedom and still issue in a valid marriage. Practice lagged behind this more coherent and clarified teaching, as custom, contrary laws, and defenders of immemorial rights of parents maintained some headway. "Even where the canonical principle of free consent was in force," as James Brundage remarks, "marriage remained part of the larger social process of the community and was often treated as a family matter to be decided in light of the common interests of the group, not merely of the contracting parties."² The counterdoctrine was nevertheless in place, with courts and codes and pulpits to expand its reach.

Since marriage usually involved a whole kin-group, with its properties, resources, interrelationships, and status, the canonical developments constituted a social revolution. Joaquín Gimeno notes how the "oppressive will of the father" gave way to "the free will of the spouses," a "new concept of marriage" that brought "a great humanization and transcendentalization" of the family. In fomenting this cultural expression, "Alfonso is of great importance," especially by his *Partidas*. The evolution included a renewed insistence on indissolubility, as against the baronial view of marriage as a breakable contract; the movement also saw a radical reduction in forbidden degrees of consanguinity from seven to four, with many dispensations even then. All this moved the marriage patterns of Europe from endogamy or concentration within the family group toward more exogamy or marriage outside. The *partida* promotes that move.³

The problem of a marriage clandestine but valid remained, to cause courts and canon lawyers many headaches, and in our own day to mislead literary scholars into interpreting such decent liaisons in poetry as illicit amours.⁴ Strange compromises also continued. In Barcelona, Alfonso's contemporary King James the Conqueror had to legislate against the widespread custom of eloping, a ritual rape in which the bachelor carried off his fiancée from her home; from now on he was to do so only with the parents' consent. In Castile too the practice of elopement/abduction had become common.⁵ Alfonso shows little of the moral rigorism of his day or the preoccupation of canonists and academics with sexual activity within marriage. He does of course

2. James A. Brundage, *Law, Sex and Christian Society in Medieval Europe* (Chicago: University of Chicago Press, 1987), 438.

3. Gimeno, "El matrimonio," 214–18. See also John T. Noonan, "Marriage in the Middle Ages: Power to Choose," *Viator* 4 (1973): 419–34.

4. See Henry Ansgar Kelly, "Clandestine Marriage and Chaucer's 'Troilus'," *Viator* 4 (1973): 435–57.

5. Discussed at length by Heath Dillard, *Daughters of the Reconquest: Women in Castilian Town Society, 1100–1300* (Cambridge: Cambridge University Press, [1984] 1989), 134–47.

deal harshly with extramarital sex under the usual legal rubrics such as adultery and concubinage.⁶

A massive guide to the themes and scholarship on European marriage in relation to law throughout the Middle Ages, with special reference to sexual issues and behavior, is James Brundage's *Law, Sex and Christian Society in Medieval Europe*, especially the two long chapters on the thirteenth century. More pertinent to Spain, and directly on the matters at hand, is Marilyn Stone's small but intensive *Marriage and Friendship in Medieval Spain: Social Relations According to the Fourth Partida of Alfonso X*.⁷ A sparse bibliography of articles in Spanish fleshes out these offerings.⁸

MARRIAGE CEREMONIES

Heath Dillard has extensively explored the ceremonies and liturgies that constituted medieval Spanish marriage. Marriage was not an event but a process, she finds, with "little uniformity" in the three stages of that process: consent of principals and families, betrothal with its vows and dowries, and "nuptial rites at the church." Before Alfonso's time the betrothal had a liturgy of its own, including blessing and exchange of betrothal rings, and a kiss to seal the preliminary vows. Though patterns changed, Dillard tells us, municipal custom continued to favor the betrothal "as the binding event in the marriage process" and approached betrothal not like a modern engagement but as "an unconsummated marriage." The fourth ecumenical council in 1215 prescribed its own pattern of banns read out publicly, a wedding at church with an officiating cleric, and "explicit" public vows. A consequent trend was that "all ecclesiastical rites were postponed to the concluding nuptial celebration"; and "the wedding day rather than the betrothal was increasingly observed as the more festive occasion." Secular customs persisted, so that the whole process "remained heavily indebted" to the more ancient liturgies and variegated practices. One surviving element was the "veiling," in which the priest laid a symbolic cloth over the bride's head and the groom's shoulder. Confirmatory public celebrations could involve the whole town or village. Clandestine or private marriages continued to bypass old and new expressions alike, but these valid unions incurred a legal penalty.⁹

6. See also Marjorie Ratcliffe, "Adulteresses, Mistresses, and Prostitutes: Extramarital Relationships in Medieval Castile," *Hispania* 67 (1984): 346–50.

7. Brundage, *Law, Sex, and Christian Society*, chaps. 8, 9. Marilyn Stone, *Marriage and Friendship in Medieval Spain: Social Relations According to the Fourth Partida of Alfonso X* (New York: Peter Lang, 1990), chaps. 2, 3.

8. José Giménez y Martínez de Carvajal, "El derecho matrimonial en las 'Partidas' de Alfonso el Sabio," unpublished doctoral dissertation, Universidad de Granada, 1960. Eduardo Fernández Regatillo, "El derecho matrimonial en las *Partidas* y en las *Decretales*," *Congressus iuridici internationalis VII saeculo a Decretalibus Gregorii IX et XIV a codice iustiniano promulgatis*, 5 vols. (Rome: Libreria Instituti Utriusque Iuris, 1935–37), 3: 317–84. Esteban Martínez Marcos, *Las causas matrimoniales en las "Partidas" de Alfonso el Sabio* (Salamanca: Consejo Superior de Investigaciones Científicas, Instituto San Raimundo de Peñafort, 1966). Martínez Marcos, "Fuentes de la doctrina canónica de la IV *Partida* del código del rey Alfonso el Sabio," *Revista española de derecho canónico* 18 (1963): 897–926. José Maldonado y Fernández del Torco, "Sobre la relación entre el derecho de las *Decretales* y el de las *Partidas* en materia matrimonial," *Anuario de historia del derecho español* 15 (1944): 589–643. Rafael Gibert y Sánchez de la Vega, "El consentimiento familiar en el matrimonio según el derecho medieval español," *Anuario de historia del derecho español* 18 (1947): 706–61. Pablo Pinedo Puebla and Juan Antonio Arias Bonet, "Monaldo y las *Partidas*" (on the influence of a contemporary *Summa iuris* on the fourth *partida*), *Anuario de historia del derecho español* 41 (1971): 687–97. Cf. the comments on each in Jerry R. Craddock, *The Legislative Works of Alfonso X, el Sabio*, Research Bibliographies and Checklists 45 (London: Grant and Cutler, 1986), nos. C308 (Giménez), C233 (Fernández), C459 (Martínez 1966), C460 (Martínez 1963), C434 (Maldonado), C300 (Gibert), and C546 (Pinedo).

9. Dillard, *Daughters of the Reconquest*, chap. 2, quotes from pp. 36, 39, 46, 52, 60, 61. On nuptial rites see now also Isabel Beceiro Pita and Ricardo Córdoba de la Llave, *Parentesco, poder y mentalidad: la nobleza castellana, siglos XII–XV* (Madrid: Consejo Superior de Investigaciones Científicas, 1990), 197–212.

WOMEN IN LIFE AND LAW

Before taking up the individual components of Alfonso's domestic law, it may be helpful to direct attention to women as revealed in it. Alfonso has no treatment on women, any more than he has for men. Women are implicitly present in most *partidas* if only as part of the general population, however, and they appear explicitly in various asides. The present *partida* comes closest to a sustained consideration of women's issues, in a society whose few public professions allowed no role for women, but a society that did acknowledge their importance in the domestic context. Even there however, especially within the restricted legal genre, topics such as betrothal, secret marriages, dowries, mistresses, illegitimacy, and raising children are located within family rather than a personalist structure. The older index to the present translation offers only ten entries under "Women," six of which are exclusionary—they cannot be judges, advocates, fief holders, clergy, nuns against the husbands' wishes, or cohabitants (unless close relatives) with priests. The other four entries deal with female imprisonment, the effect of a husband's ordination on the wife, women royals, and a bleakly legal definition of woman ("a virgin more than twelve years of age, and all others [females]").

Alfonso does caution, in connection with that definition, that his use of the generic "man" throughout the code "shall apply to a woman as well as to a man, although no mention of her is made," except where "special cases" might logically exclude her.¹⁰ Equally important, however, are the references that escape the translator's index. In the previous *partida* on court procedure, for example, women can serve as proctors before the court when acting on behalf of old or ill relatives without resources or for relatives in slavery or under the death penalty. They can be judges if they are queens, countesses, or feudal ladies with jurisdictions. As witnesses, women can send a proctor or receive the deposing bailiff at home. A woman can restrain her wastrel husband by petition, to remove control of dowry and her personal property to a trustee. When hostile witnesses are arrested and coerced, "a woman of aristocratic family" is excepted. Both the generic and these oblique specific items in a single *partida* invite a thorough close reading of the entire code to reveal Alfonso's sociolegal provisions for women.

Alfonso and his academic coauthors would not have escaped the scientific ambience of his time, particularly the received biology of Aristotle and Galen from the ancient world by which women were inferior in physical characteristics and in reproductive function, and so under a moral and intellectual subservience to the male. The king does not advert explicitly to that established wisdom, however, or use it to forbid an active role in court. As we saw in the previous *partida*, he excluded women from the legal profession because it was "not becoming for her to be present in a crowd of men deciding lawsuits," and because it was "neither proper nor honorable for a woman to assume masculine duties, mingling publicly in order to argue cases for others." Alfonso does not deny her competence; indeed he cites the Roman matron Calpurnia, who was "very learned" in law, as "so shameless that she annoyed the judges with her speeches, so that they could not do anything with her." For the king, the crux of the matter is that "women lose their modesty" or femininity in such encounters, making it difficult "to listen to them and dispute with them." Does Al-

10. This comes at the end of the seventh *partida* (VII.xxxiii.6), in the context of criminal law but of general application.

fonso's rebuff to lady lawyers also suggest that some women had actually taken an active if abusive role in some civil trials?

Few subjects in medieval studies have been so relentlessly pursued as the role of women, from both historical and literary perspectives. Against that burgeoning bibliography, heaped higher by the year, medieval Spanish historiography can show only a modest list, much of it only now moving from the conference panel and doctoral dissertation to the publisher's office. A complicating factor in Spanish women's studies is the contrast between traditional societies in transition, such as Castile or Aragon, and the urbanized commercial societies of the Mediterranean coast such as the Catalan kingdoms. Within those larger categories, women of different classes or castes experienced life very differently; and most women and men labored intensively in peasant communities. Chronologically each century reshaped gender possibilities and, according to new contexts, found variant expressions of women's roles.

As a supplement to the introductory bibliography on medieval Spanish marriage offered above, there are wider studies on women and law in Spanish medieval society. These divide into works on women in general, women as seen in law, women in the *Partidas*, women in art, and women in different geopolitical zones. Pride of place goes to Heath Dillard's classic *Daughters of the Reconquest: Women in Castilian Town Society, 1100–1300*, with chapters as well on marriage, family, and the protection and regulation women experienced in actual encounters with the law.¹¹

Among subsidiary themes, widows have received special attention from Dillard and from Clara Estow. Recent congresses have taken up "the condition" of women in Castile and in the realms of Aragon, as well as medieval Spanish "women of power."¹² Closer to our theme are a book and two articles on women as they appear in medieval Spain's legal system, as well as a doctoral and a master's dissertation on women in the *Siete Partidas*, both long unpublished.¹³ Women appear in graphic profusion and in many roles among the hundreds of miniatures in Alfonso's book of Marian miracle tales. Connie Scarborough has explored these in her *Women in Thirteenth-Century Spain as Portrayed in Alfonso X's Cantigas de Santa Maria*; she reckons that women (besides the Virgin) appear in some 50 percent of these paintings, on a kind of parity with male figures. With Ana Domínguez Rodríguez, Scarborough sees in this iconography "a fundamental change in the conception of women" from the sin and lust preoccupations of Romanesque artists "to their presentation as pillars of society because of their maternal roles."¹⁴

11. Dillard, *Daughters of the Reconquest*, chap. 2 on weddings and matrimony, chap. 3 on the conjugal household, chap. 4 on widows, and chap. 7 on protection in law; Clara Estow, "Widows in the Chronicles of Late Medieval Castile," in *Upon My Husband's Death: Widows in the Literature and Histories of Medieval Europe*, ed. Louise Mirrer (Ann Arbor: University of Michigan Press, 1992), 153–67. See also Cristina Segura Graiño, "Las mujeres en el medioevo hispano," *Cuadernos de investigación medieval* 1 (1984): 7–56.

12. *La condición de la mujer en la edad media: coloquio celebrado en la Casa de Velázquez* (Madrid: Casa de Velázquez/Universidad Complutense, 1986). See too *Queens, Regents and Potentates*, mostly in Spain, ed. Theresa M. Vann (Dallas, Tex.: Academia Press; Rochester, N.Y.: Boydell and Brewer, 1993).

13. *Las mujeres medievales y su ámbito jurídico*, ed. Cristina Segura Graiño (Madrid: Universidad Autónoma, 1983); Lucy A. Sponsler, "The Status of Married Women under the Legal System of Spain," *Journal of Legal History* 9 (1982): 125–52; Ruth Lansing, "The Thirteenth-Century Legal Attitude Toward Women in Spain," *Publications of the Modern Language Association* 36 (1921): 492–507; Christine C. Steffen, "Women in *Las Siete partidas* of Alfonso X de Castilla y León," unpublished doctoral dissertation, University of Texas, 1979; Lourdes G. Coutin, "Situación social de la mujer en las *Siete partidas*," unpublished master's dissertation, University of Miami, Coral Gables, 1967. Cf. Craddock, *Legislative Works*, nos. C194 (Coutin), C395 (Lansing), and C641 (Steffen).

14. Scarborough, *Women in Thirteenth-Century Spain* (Lewiston, N.Y.: Edwin Mellen, 1993), quote on 60; Ana Domínguez Rodríguez, "Imágenes de la mujer en las Cantigas de Santa Maria," in *La imagen de la mujer en el arte español* (Madrid: Universidad Autónoma, 1984), 29–42. See also Rebecca Lynn Winer, "Silent Partners? Women, Commerce, and the Family in Medieval [Catalan] Perpignan, c. 1250–1300," unpublished doctoral dissertation, University of California at Los Angeles, 1996; Louise Mirrer, *Women, Jews, and Muslims in the Texts of Reconquest Castile* (Ann Arbor: University of

WOMEN'S WORK

Women in Spain were more active outside the home than many historians realize. The fourth *partida* focuses strictly on the domestic realm and its affiliates, allowing women's other roles in commerce, finance, land management, religion, pharmaceuticals, petty sales, and artisanry to sink beneath the genderless surface of other *partidas*, or to fall outside formally legal concerns. A glimpse of that wider world is afforded by David Herlihy's *Opera Muliebria: Women and Work in Medieval Europe*, including a section on Spain. For Castile, Heath Dillard notes the shopkeepers, tradeswomen, bakers, innkeepers, stockherders, wet nurses, domestics, and the like. Michael McVaugh has clarified women's practice in medicine and surgery in the realms of Aragon. Teresa Vinyoles has gathered archival documents and notices on the work of Barcelona women.¹⁵ Linda A. McMillin's thorough archival study of the Benedictine convent of Sant Pere de les Puel·les in thirteenth-century Barcelona reflects the many such convents engaged in land acquisitions and administration.¹⁶ Women were enlisted in some numbers among the dozens of military companies taking to the walls of Barcelona to meet an invasion threat, though their roles are not expressed; the situation may echo the case of the Catalan Grand Company in Byzantium, whose women had to defend the walls in an emergency with the soldiers away. The crown registers of James the Conqueror in the realms of Aragon reveal war dogs in the castles; each dog had a woman handler, with salary for woman and dog equivalent to that of a fighting man.¹⁷

Under the general title "Jornadas de Investigación Interdisciplinaria sobre la Mujer," scholars have come together to share their contributions on medieval and modern Spanish women. The third congress focused on women in medieval cities and was published in 1984. The fifth congress specified precisely women's work in medieval Spain, with twenty scholarly contributions, published in 1988.¹⁸ Using the neglected riches of notarial codices, Rebecca Winer has recently assembled a comprehen-

Michigan Press, 1966), a study of the literary image of the three stereotypes and their interrelations; Teresa-Maria Vinyoles i Vidal, "L'amor i la mort al segle XIV: cartes de dones," *Miscel·lània de textos medievals* 8 (1996): 111–98, including copies of these letters by women. Cf. also Ann M. Pescatello, *Power and Pawn: The Female in Iberian Families, Societies and Cultures* (Westport, Conn.: Greenwood Press, 1976) and Ronald E. Surtz, *Women in Late Medieval and Early Modern Spain: The Mothers of St. Teresa of Avila* (Philadelphia: University of Pennsylvania Press, 1995). For a very unusual example—of a politically powerful and commercially active woman—recently recovered from the archives, see Robert I. Burns, S.J., "Daughter of Abū Zayd, Last Almohad Ruler of Valencia: The Family and Christian Seigniorship of Alda Ferrándiz, 1236–1300," *Viator* 24 (1993): 143–87.

15. Herlihy, *Opera Muliebria: Women and Work in Medieval Europe* (New York: McGraw-Hill, 1990), "Iberia" on 168–71; Dillard, *Daughters of the Reconquest*, index under "work of women"; Michael McVaugh, *Medicine Before the Plague: Practitioners and Their Patients in the Crown of Aragon, 1285–1345* (Cambridge: Cambridge University Press, 1993), 103–7 ("The Status of Women's Practice"), 51, 140, 162; Teresa Vinyoles i Vidal, *Les barcelonines a les darreries de l'edat mitjana (1370–1410)* (Barcelona: Fundació Salvador Vives Casajuana, 1976), especially chap. 2, "El treball."

16. Linda A. McMillin, "Sacred and Secular Politics: The Convent of Sant Pere de les Puel·les in Thirteenth-Century Barcelona," in *Iberia and the Mediterranean World of the Middle Ages: Studies in Honor of Robert I. Burns, S.J.*, ed. Larry J. Simon (vol. 1), Paul E. Chevedden, Donald J. Kagay, and Paul G. Padilla, 2 vols. (Leiden/New York: E.J. Brill, 1995–96), 2: 225–37, including her supporting article in note 8 and the frequent litigation by the abbess. Cf. her "Cloister and Society in Thirteenth-Century Barcelona: The Women of Sant Pere de les Puel·les," unpublished doctoral dissertation, University of California at Los Angeles, 1990.

17. *Onomàstica barcelonina del segle XIV*, ed. Francisco Marsá et al. (Barcelona: Universidad de Barcelona, 1977), a roll call of thousands of residents drafted, with their arms. In theory at least, men or women might send a surrogate, but the list seems too comprehensive and direct. See also Linda A. McMillin, "Women on the Walls: Women and Warfare in the Catalan Grand Chronicles," *International Catalan Review* 3 (1989): 123–36. For war dogs see Robert I. Burns, S.J., "Women in Crusader Valencia: A Five-Year Core Sample, 1265–1270," *Medieval Encounters: Jewish, Christian, and Muslim Culture in Confluence and Dialogue* 6 (2000).

18. *El trabajo de las mujeres en la edad media hispana*, ed. Angela Muñoz Fernández and Cristina Segura Graiño (Madrid: Asociación Cultural Al-Mudayna, 1988); *Women at Work in Spain: From the Middle Ages to Early Modern Times*, ed. Marilyn Stone and Carmen Benito-Vessels (New York: Peter Lang, 1998).

sive view of “Women, Commerce, and the Family” in thirteenth-century Catalan Perpignan, with many insights on the “hierarchy of domestic service” and the extra-familial roles of women.¹⁹ As everywhere in Europe, “the violent age of deep crises and difficult recovery” of the post-Alfonsine fourteenth and fifteenth centuries “saw the end of the easy partnership of the sexes” in the world of women. “Guilds and governments” in that future time would severely restrict or completely exclude women “from prestigious and well-paying jobs.”²⁰ In that respect Alfonso’s century and locale had been fortunate.

THE AUTONOMOUS SPOUSE

A final comment on the general nature of marriage in medieval Spain deserves attention. The legal context already established and not abrogated by the *Partidas*, which would accompany the Alfonsine code into Spanish and eventually into California law, saw the spouses as much more autonomous persons than did the equally long-lived English common law still prevalent in the United States. A report to the California legislature on the two laws in 1850 after the American conquest summarizes the contrast of laws. Spanish law “regards husband and wife, connected it is true by the nuptial tie yet disunited in person,” as having “dissevered interests in property.” In terms of property, their union is seen “in the light of a partnership, no more intimate or confiding than an ordinary partnership in mercantile or commercial business.” In contrast, English common law considers the spousal bond “as so close in connection” that the two “become one in person, and for most purposes one in estate,” with the control of the family’s property in the husband’s hands as “in truth and reality the head of the household,” conceding to the wife only dowry rights and husbandly payment of her debts. The Spanish principle of community property and personal earnings or holdings, as described above, had serious implications for women in Alfonsine times.²¹

BETROTHAL VERSUS MARRIAGE

Alfonso devotes twenty-seven titles, containing 256 essays or laws, to his *partida* on the family and domesticity, each element taken up in orderly sequence. The foundations, namely betrothal and marriage, enter into law as contracts, subject to the expectations and exigencies of any contract. Betrothal is a promise to marry, either bilateral or unilateral. Ideally it should be witnessed and signed in a document. For a number of good reasons it can be rescinded, but breach of promise is a serious lapse. Alfonso’s twelve essays on betrothal cover its definition, kinds, conditions, circumstances, and the affinities or legal relationships it creates. After explaining engagement as oral by the man, the king distinguishes a promise to wed in the future as against a declaration of present intent, offering five formulas both mutual and unilateral, including a pledge by putting a ring on the fiancée’s finger. A declaration of present intent, if conditional or suffering some impediment, can become in law merely a betrothal. The declaration alone (*verbum de presenti*) creates a marriage, with or without subsequent sex. The

19. Winer, “Silent Partners?”

20. Herlihy, *Opera Muliebria*, 186.

21. Quoted at length in Peter Thomas Conmy, *The Historic Spanish Origin of California’s Community Property Law and Its Development and Adaptation to Meet the Needs of an American State* (booklet) (San Francisco: Native Sons of the Golden West, 1957), 9. See my “The *Partidas* in California Law” in the General Introduction in volume 1 of this edition. Cf. also M. A. Belda Soler, *El régimen matrimonial de bienes en los “Furs de Valencia”* (Valencia: Editorial Cosmos, 1965).

minimum age for betrothal is eight years; for marriage it is fourteen for males and twelve for females, though knowledge and sexual capacity can allow exceptions. Complications ensue when one woman betroths two men or two men one woman. The law allows nine reasons for breaking off a betrothal, from fornication by either party with someone else, to mutual consent, to gross mutilation such as leprosy or losing a nose. As with marriage, betrothal requires that both parties be present and freely consent.

Alfonso notes that matrimony etymologically honors the *mater*, “because the mother endures greater hardship with children” both before and after birth, with “great privations in bringing them up by themselves,” and with the children needing her more. “Love should increase between husband and wife” from the very nature of matrimony. If either commits adultery, a separation though not a divorce can be arranged; if both parties are guilty, they must stay together. The king distinguishes between the structural reason for the institution of marriage itself, to populate the earth with children and to channel the sexual appetite, from the psychological motives experienced by the spouses, as “on account of female beauty or for the sake of wealth” or to unite hostile families. The marriage bond remains even if one party “become[s] a heretic, a Jew, or a Moor” or commits adultery.

Even if one becomes a leper, the other should “keep the faith and loyalty which they promised one another,” and “the healthy one [should] take care of the other, and do for him or her everything necessary,” unless a leper-spouse moves into a leprosarium that lacks separate housing. The children of the leper may live apart, to avoid “exposure to the disease”; but “the husband has authority over the person of his wife, and she over that of her husband.” Alfonso then stresses that “sexual parity” by which each spouse has equal call on the sexuality of the other, which modern commentators find so significant.²² Alfonso approves of marital sexual activity either in the hope of having children or to comply with the spouse’s need, but sees a venial sin when desire reigns supreme. Serious sin, however, he reserves for the man who “goads” himself by aphrodisiacs or “other measures” to do what he otherwise could not perform, “for it is a very outrageous thing for him to treat his wife as unreasonably as he would any bad woman.”

The rest of this title explains impediments that either invalidate an attempted marriage or render it unlawful. Mistaken identity obviously invalidates; accidental misunderstandings do not, as when the bride believes her fiancé to be noble or rich, or when he thinks her a virgin. A permanently insane person cannot marry, though an intermittently insane person can do so in a lucid moment. Force, fear, or threats to effect or persuade to marriage will instead destroy it. The three major clerical orders invalidate (but not the remaining six) as do the solemn (but not simple) vows of a religious. Impotence by “deformity,” castration, or “where a man is of so cold a nature that he cannot copulate” is an impediment, though not if it is a postmarriage affliction. “Vile and outrageous” impediments include incest, a term that also applies to carnal relations by a man with any female relations of his lover or his wife, or with a nun; “the same rule applies to women” with regard to the male relatives of her lover or husband.

Disparity of religion excludes as partners a Jewish, Muslim, heretical, or non-Christian man or woman. A free man or woman can marry a slave only if the latter’s condition is known to them. Affinity or close relationship, corporeal or spiritual (explained in a later title), impedes marriage, including adoption “as where a woman

22. James A. Brundage, “Sexual Equality in Medieval Canon Law,” in *Medieval Women and the Sources of Medieval History*, ed. Joel T. Rosenthal (Athens: University of Georgia Press, 1990), 66–79, especially 70–72. Cf. John T. Noonan, “Marital Affection in the Canonists,” *Studia gratiana* 12 (1967): 479–509.

adopts a man." Anyone who kills his wife, a priest, or a solemn penitent, or who rapes another's betrothed, cannot marry without a dispensation. Marriage is illicit during certain liturgical seasons and invalid when sufficient understanding or physical maturity is lacking. On the other hand, the deaf or mute can marry by signs when exchange of words is impossible.

WEDLOCK PROBLEMS

The essentials laid down, Alfonso now details some special topics. Clandestine or secret marriage had just been formally outlawed by the Fourth Lateran council in 1215, but with the essence of the sacrament consisting of the declarative interchange by a man and woman, clandestine unions were still valid if illicit even when unverifiable. Worse, fornication could extend into the appearance or reality of a mutual marital acceptance. For those who were already secretly married, a public solemnization ceremony is prescribed, along with a severe penance. Alfonso decries clandestinity for two added civil reasons: the dishonor invites violence by the bride's family; and some men deliberately "waste [the bride's] property and desert them." Some abandoned clandestine wives subsequently, from poverty, "become bad women." To curb these evils in the political order, the king orders clandestine husbands to be placed in the power of the bride's parents as a kind of slave for life (but not to be wounded or killed). Canonical penalties fall, of course, on both spouses, on their children, and on any complaisant priest involved. A short title here deals with prenuptial agreements, considered as contracts, some of them suitable and others unsuitable or even invalid. Sample conditions given include marriage to a Jew or Moor "if you will become a Christian."

Another short title covers the marriages of slaves. (Slavery itself, here excoriated as "the vilest and most contemptible thing that can exist among men," gets a formal treatment below as a component of the household.) Christian slaves may marry each other as well as marry a free person, except in cases where the slave conceals his or her status. The master cannot interfere in the choice; if he knows of a marriage between his slave and a free person, and does not then claim ownership, the slave becomes free. Slaves cannot be sold separately, as they commonly would be in the nineteenth-century United States, but only in their family units, and they must be able to live together. If each slave spouse has a different master, one owner must arrange a solution or be compelled to sell to the other. As we shall see below, slaves in Spain at this time were invariably Muslims, often captives from the Reconquest campaigns that characterized both Castile and the Arago-Catalan lands of this century. The comments in the *Partidas* about Jewish or other ethnic or heretic slaves may derive from Alfonso's design for an inclusive imperial code embracing even hypothetical situations, or it may owe something to Roman or Visigothic legal antecedents.

IMPEDIMENTS: CONSANGUINITY, AFFINITY

Two titles now take up the tangled problem of consanguinity and affinity as impediments to marriage, and then two more for the causes and procedures of annulment. Reformers, councils, jurists, and popes worried over the complexities of near incestuous degrees of relationships. The great Lateran Council of 1215 had simplified matters by reducing the forbidden degrees or generations of closeness from seven to four degrees and had multiplied dispensations. The traditional endogamy or practice

of marrying within one's group or extended family was contained by the rules of consanguinity; and an exogamy or outwardly dispersed pattern of unions was encouraged. The French historian Georges Duby has famously proposed two basic "models" or archetypes of twelfth-century marriage, on the one hand the layman's endogamy, under family control and admitting of divorce, and on the other the church's exogamy, between free individuals and fully indissoluble.²³ Alfonso lists three of the "many reasons" for exogamy, stressing the practical problems and jealousies in such a household and the unhealthy withdrawal from strangers.

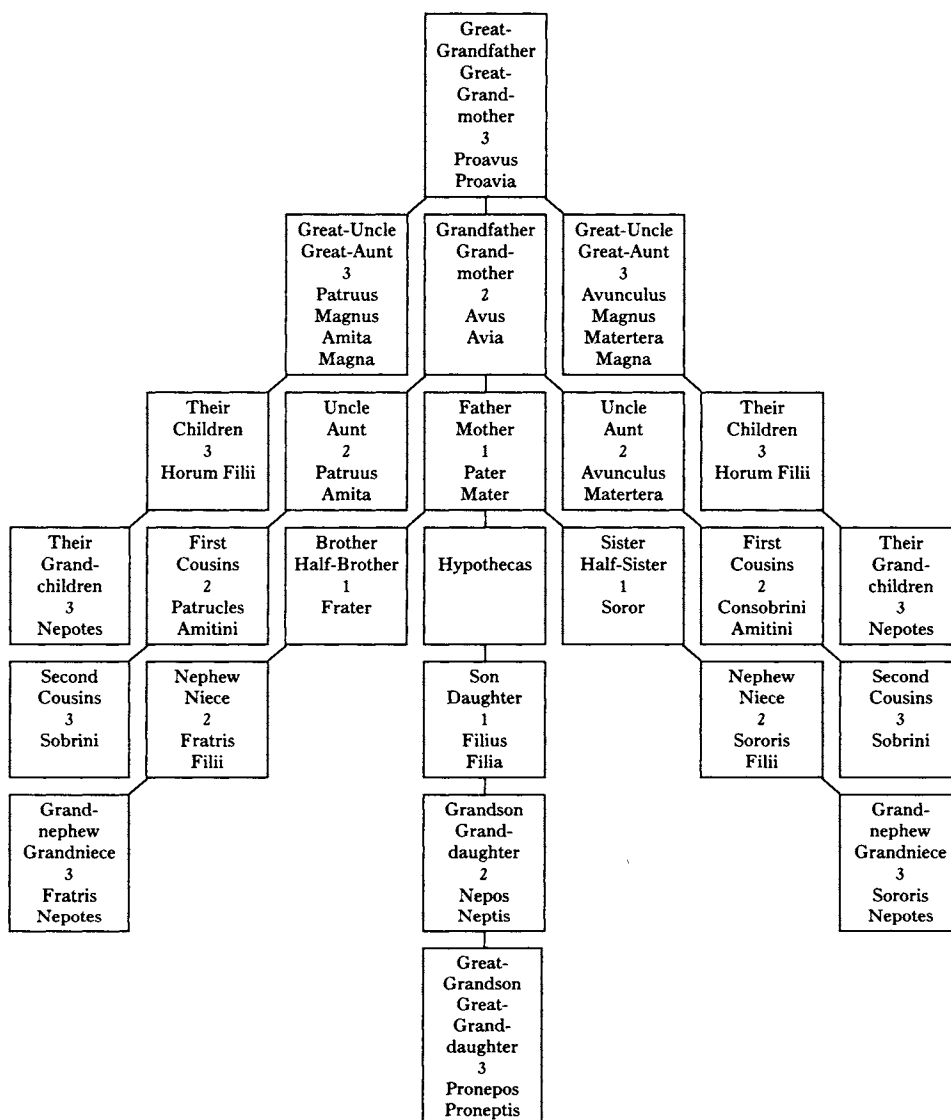
People find the medieval impediments of consanguinity difficult to fix in the mind. Alfonso's code anticipates the problem and so offers as a visual aid a "tree" of genealogical relationships, which is omitted from some editions however and from the present translation. In its place here is a graphic tree in English (see Table 1). A later interpolation in the *partida* text suggests that "whoever wants a better explanation than this should have recourse to Juan Andrés"—meaning the Bolognese canonist Johannes Andreas (1270–1348) who had written a *Solemn Treatise on the Tree of Consanguinity and Affinity*.²⁴ The code's text explains the prohibited "descending" family relationship down to the fourth degree and "ascending" relations back up to the fourth included, as well as to the "collateral" branches to the fourth degree involving brother/sister, uncle/aunt, and nephew/niece relations.

Alfonso offers three rules for computing such close relationship by canon law, and another three for the civil law, whose differing degrees apply to inheritance without a will instead of to marriage. A corporeal "affinity" is established by sexual intercourse, usually fornication, affecting children to the fourth degree. Muslims and Jews in Christian Spain can marry entirely according to their own religion; but if converted, compassion exempts them from applying consanguinity rules to their previously achieved marriage. A spiritual affinity, without further degrees, attaches to godparents and some other personnel at baptism and to sponsors and some others at confirmation. An impediment by adoption issues from civil law, whether an adoption before the king to provide an heir, or adoption before a judge of someone who already has an effective father.

In title 8 the code focuses more closely on inability to have intercourse as a marital impediment. Loss of organs "by a bear, a hog, or a dog," by human hand, or by leaping over a fence, or other accidents invalidates a later marriage. Women or men malformed by nature, at least with reference to carnal relations with a specific spouse, may be able to marry a physically more suitable candidate. An essay here recounts the process, oaths, and formulas by which notice of such a situation may be considered by the court, with seven female witnesses for her and seven males for him. A long title of twenty essays now takes up other reasons for annulling a marriage—in effect declaring that a valid marriage had never existed. Where no fault is discovered, either spouse may table an annulment "request" (not a plaintiff's "accusation"); alternatively they may prefer to live celibately "as brother and sister" with the impediment, as still married to all public appearances. Adultery comes in again here, as does forcible rape. A complicated case involves a Jewish woman who is divorced by Jewish law from her first Jewish husband, and who has married a second Jewish husband, while the first

23. Georges Duby, *Medieval Marriage: Models from Twelfth-Century France* (Baltimore: Johns Hopkins University Press, 1978); see also his *Love and Marriage in the Middle Ages* (Chicago: University of Chicago Press, 1994).

24. Stone, *Marriage and Friendship in Medieval Spain*, 73–75, discusses the interpolations and clarifications probably added here "by jurists and scribes" later. Stone's chapter five deals with "Kinship and Godparentage." A helpful explanation of prohibited degrees and their history is Charles W. Henry, "Affinity" and "Consanguinity," *New Catholic Encyclopedia* (New York: McGraw-Hill, 1967–96), I: 167–70; IV: 192–96.



Genealogical tree of canonical impediments to marriage by reason of blood relationship (consanguinity). Hypothecas at the center is the person seeking the degree of relationship to himself. The number in each box expresses that degree (here given only to the third degree) along with the relationship itself in English and Latin. The vertical above and below him is the direct line, the branches are the collateral line. Thus a niece is related to him in the second degree, collateral line (*New Catholic Encyclopedia*, 1:193).

husband has become a Christian and married a Christian woman. The original wife (but not her second husband) then also becomes a Christian and wishes to reclaim her original husband. When the situation is sorted out, the first wife and husband, now Christians, must return to their original marriage. Much of the rest of this title is procedural, concerning witnesses, modes of procedure, drafting court documentation, and rules of evidence. A short title ensues on "divorce," which is a legal separation in every way except that the marriage bond remains intact and indissoluble.

DOWRY AND DOWER

One of the longest and most complex titles in this *partida* concerns dowries and the related dower. The Roman dowry system had anciently disappeared, while the medieval form was evolving in unexpected ways. Though Castilian practice developed somewhat differently than Catalan, our most penetrating discussion of the dowry-dower evolution is Stephen Bensch's recent examination of the system in Barcelona's society. The dowry was a fund from the bride's family, related to her inheritance rights; though the husband controlled that property, he could not allow its value to diminish. The dower (*sponsalicium* or *augmentum* in Latin) had begun as the gift of a portion of the husband's estate to his wife; but by the thirteenth century at Barcelona it had become a countergift worth only half the dowry. In theory an insurance for the future widow and a help to maintain the family, the dower had grown into "a broad grant of rights to the wife over all her husband's property" both present and future. "Technically distinct," dowry and dower together "represented a complex intermingling of rights controlled by both husband and wife," with the dowry the "dominant element." Wives could "annul any contract made by their spouses without their permission if it involved dotal property." Subtle shifts in "the intricate interface of rights and property" in this Catalan system eventually "caused women to surrender a degree of independence" in disposing of dotal property, "but it increased their authority over and management of the conjugal fund." Incidentally, Bensch finds Duby's tension between familial and ecclesiastical "models" to have been resolved here by the thirteenth century.²⁵

Alfonso discusses "dowries, donations, and marriage gifts" in broad terms, as given either at betrothals or after the marriage contract. Dowry property has two categories, depending on whether it comes from father, grandfather, and direct-line relations or from other family members. The dower, "called in Spain a marriage gift," could apparently have a counterpart gift from woman to man, "something that rarely happens, because women are naturally greedy and avaricious." Alfonso explains the formal and informal ways of arranging a dowry, the kinds of property possible (including a debt owed her, or female slaves), the difference between "estimated" or appraised components and those not so assessed, and the "paraphernalia" or separate possessions of the wife. It is expected that spouses will give each other gifts, "through the affection which they have for one another," but the law forbids such extensive giving as would make one spouse richer in personal property and the other spouse poorer. The fate of dowries is also considered in cases of separation, annulment, or

25. Stephen P. Bensch, "Family Structure and the Devolution of Property," in his *Barcelona and its Rulers, 1096–1291* (Cambridge: Cambridge University Press, 1995), 234–76, especially 260–75. See too the very mixed Castilian custom-law in actual life in Dillard, *Daughters of the Reconquest*, chap. 2.

death, or in the case of a wastrel or gambling husband. Alfonso appends here a series of short titles on special aspects of marriage and family.

Title 12 reassures widows that they may marry "as many times as they wish." A widow may also marry "as soon as she pleases" by church law; by civil law in Spain, however, she is severely punished for remarrying before a year's mourning has passed, so that she incurs a "bad reputation" and forfeits both her dower and her share in the dead husband's estate.

CONCUBINES, ILLEGITIMATE CHILDREN, ADOPTION

Considering the family in its broadest meanings leads Alfonso to explain the peculiarly Spanish institution of semipermanent concubinage called *barraganía*.²⁶ Ordinary concubinage, in the sense of living together or having mistresses in any number, was not the concern of the code. Indeed, if a man did not publicly declare his concubine, Alfonso notes, "a well-grounded suspicion will arise" that she is "his lawful wife." Many people also drifted into unions that the church could hope to regularize later or to acknowledge as essentially a marriage. Though Alfonso sees formal concubinage as "a mortal sin," he explains that civil law tolerated it as a lesser evil in the social sphere and merely regulated it. In the Spanish institution, perhaps an echo of concubinage in ancient Rome, the man had to state before reliable witnesses that the woman was a concubine. Thus King James of Arago-Catalonia had an elaborate contract drafted for his official concubine, including maintenance in high state as well as affluent provision for any children to come. A married man cannot legally have such a concubine, Alfonso warns, nor can a cleric. A *barragana* cannot be a virgin, a relative, a widow of decent repute, or a female under twelve years. She can be a slave or freedwoman or a person of low status, and she should be of such a character that the man can marry her later if he chooses. Eminent men or nobles should avoid as concubines slaves, freedwomen, "a female buffoon," a tavern keeper, "a huckster," "a procuress," or the daughters of any of these. Concubinage is actually desirable for a governor in far-off countries where a suitable marriage is impossible during his term.

Just as Alfonso has a title on legitimate children and their legal advantages, so he devotes a much longer title to illegitimate children. Where impediments to marriage are unknown to the parties, the children are legitimate. "Marriage has such force" that illegitimate children are legitimated when a man marries his concubine; the same "extraordinary power" of marriage will free a slave woman and legitimize her offspring. Alfonso lists as special categories of illegitimate offspring the "bastard" (Latin *nothus*) born from adultery, the "spurious" born from a concubine who takes other lovers, and the *mamzer* born of a prostitute; the last term comes directly from Hebrew, where it means instead an illegitimate child from a severely forbidden union, as from incest or double adultery, incurring *mamzerūt* status. Noting that kings and popes can legitimize upon petition, Alfonso also provides such private mechanisms as legitimizing by notarized document, last testament, or publicly devoting one's child to service of sovereign or of town council.

Adopted sons, mentioned above in connection with marriage impediments by artificial relationships, now appear in greater detail (daughters are not mentioned).

26. For Spain see Burns, *Crusader Kingdom of Valencia*, 1: 113–14; 2: 424. See too James A. Brundage, "Concubinage and Marriage in Medieval Canon Law," *Journal of Medieval History* 1 (1975): 1–17; and on *barraganía* his *Law, Sex, and Christian Society*, 445–46.

Adoptions made before a judge can be canceled at will; those done before the king can only be canceled for special reasons. One cannot adopt an “infant” (under 7 years), or one’s legal ward (until he reaches 25 years), or an emancipated slave. If the boy is between 7 and 15 years, the king must first investigate the adopter’s circumstances and character. The adopter must be a freeman, able to procreate, and 18 years older than the adoptee. A woman can only adopt, with the king’s consent, to replace a son lost in battle or on town service; otherwise “men would deceive them [women] or be deceived by them.” A father can transfer his young or adult son to an adopter. A freed slave retains residual loyalty to his master and thus cannot fully come under an adopter.

Before extending his understanding of family further, Alfonso has a treatise on *patria potestas*,²⁷ the authority of a father deriving from the natural “bond of reverence, subjection, and castigation.” This authority extends only to legitimate and adopted children. In general a son cannot sue in court without his father’s consent. During a famine or desperate time a father can sell or pledge his son; if a besieged and famished castellan “can eat his son” rather than surrender, Alfonso argues, then temporary selling is a logical right. A companion title eighteen lists the circumstances that abrogate a father’s control—death, “civil death” by exile or penal labor, outlawry, incest, and child abuse (if one “punishes his child with great cruelty” or sexually abuses his daughters). Besides formal emancipation by the father before a judge, automatic emancipation affects a son appointed to any of a dozen high offices from chancellor and chief notary to court steward or bishop.

RAISING CHILDREN

Titles 19 and 20 cover the raising of children, respectively one’s own and someone else’s. “Every man” gladly nurtures his children “through the great affection he entertains”; indeed, the “great force” of that love increases “much more” by the process itself. According to their ability, parents must provide food, clothes, shoes, housing, “and everything else” a human being needs, or face arrest and compulsion. The mother has primary care while the infant is under three, then the father takes major responsibility. A father is obliged to support his mistress’s offspring; children from incest, adultery, or fornication might be raised by direct relatives “through courtesy.” Pity or kindness may lead one to take in a stranger’s child or an abandoned child; one cannot use such unfortunates as servants or keep them for repayment after grown. “Shame, cruelty, or wickedness” can cause “a father or mother” to abandon “little children” at the doors of churches and hospitals, where others out of “compassion” take them home to nurture.

In her chapter on children in the fourth *partida*, Marilyn Stone deals another blow to the tendentious historiography that depicts medieval childhood as bleak, hardly existent, and soon over. Stone argues that this segment of Alfonso’s code, when mingled with the sections on child rearing of princes in the second *partida* and with contemporary comments on childhood by authors like Juan Manuel and Ramon Llull, shows “particular solicitude for small children,” insistence on affection and kindness in nurturing a youngster, a rejection of “sarcasm and physical harm,” an appreciation of one’s child as valuable and “as though sacred,” the need for teaching manners, the

27. See Alfonso Otero Varela, “La patria potestad en el derecho histórico español,” *Anuario de historia del derecho español* 26 (1956): 209–41.

perception of stages in a child's growth, and the all-important realization that love constantly increases by the very act of bringing up a child.²⁸

SLAVES: A SLAVERY CODE

The modern reader is surprised to encounter slavery frequently in the *Partidas*, and may suspect that it is merely a legal echo of the Roman Empire's practice. In fact slavery flourished in the Muslim, Christian, and Jewish communities of Alfonso's time. Unlike the situation in ancient Rome, however, slaves constituted only a very small percentage of the population. That would change as modern Europe emerged, with slaves "infinitely more numerous during the last two centuries of the Middle Ages than in the thirteenth" and "pervasive" in Renaissance Italy.²⁹

In Alfonso's day slavery was mostly an urban phenomenon, less frequently agricultural, notably domestic and artisan. It was also largely female, to supply the maids, nannies, teachers, cooks, servants, cleaners, and the like for affluent households. Concubinage with slaves was therefore a concomitant "blatant social evil" despite severe counterlaws.³⁰ Male slaves rarely held menial jobs but rather artisan occupations. Though slavery contracts described their subjects as white, black, or olive, most slaves in Mediterranean Europe were white. In Spain the culminating Reconquest of the thirteenth century flooded the market with "Saracen captives," taken both on land and by the host of petty corsairs at sea, so that the slave population there was "almost exclusively Muslim in origin."³¹ Domestic slavery involved a live-in situation, where the slave was a member of the household; Shlomo Goitein argues with persuasive examples that the slave thus became "like a relative" and "a member of the family," improbable as that conclusion may seem.³²

The Mediterranean communities saw no moral problem in slavery itself. It was a physical evil, incongruously subsumed under warfare and capture (whence the usual

28. Stone, *Marriage and Friendship in Medieval Spain*, chap. 4 on "Children," especially 89–90, 106. see also Thomas Burman, "The Rearing of Children in the *Siete Partidas* of Alfonso X," *Scintilla* (University of Toronto) 5 (1988): 44–71.

29. William D. Phillips, Jr., *Slavery from Roman Times to the Early Transatlantic Trade* (Minneapolis: University of Minnesota Press, 1985), 106. Phillips, a distinguished Hispanist, devotes careful attention to medieval Spain, especially 107–13. More focused is his *Historia de la esclavitud en España* (Madrid: Editorial Playor, 1990). See also Charles Verlinden, *L'esclavage dans la Europe médiévale*, 2 vols., vol. 1, *Péninsule ibérique-France* (Bruges: Universiteit te Gent, 1955–77), 427; Joannes Vincke, "Königtum und Sklaverei in aragonischen Staatenbund während des 14. Jahrhunderts," *Spanische Forschungen der Görresgesellschaft, Gesammelte Aufsätze zur Kulturgeschichte Spaniens* 25 (1970): 19–112; Pierre Bonnassie, *From Slavery to Feudalism in South-Western Europe* (Cambridge: Cambridge University Press, 1991); and Paul G. Padilla, "The Transport of Muslim Slaves in Fifteenth-Century Valencia," in *Iberia and the Mediterranean World of the Middle Ages: Studies in Honor of Robert I. Burns, S.J.*, ed. Larry J. Simon (vol. 1), Paul E. Chevedden, Donald J. Kagay, and Paul G. Padilla, 2 vols. (Leiden/New York: E.J. Brill, 1995–96), 2: 379–93. Cf. Jacques Heer, *Esclaves et domestiques au moyen âge dans le monde méditerranéen* (Paris: Fayard, 1981). For the medieval academics' mind see Bede Jarrett, O.P., "Slavery," chap. 4 in his *Social Theories of the Middle Ages, 1200–1500* (London: Frank Cass and Co., 1968). For an archival study on eastern Spain see Stephen P. Bensch, "From Prizes of War to Domestic Merchandise: The Changing Face of Slavery in Catalonia and Aragon, 1000–1300," *Viator* 25 (1994): 63–93; cf. James Brodman, *Ransoming Captives in Crusader Spain: The Order of Merced on the Christian-Islamic Frontier* (Philadelphia: University of Pennsylvania Press, 1986), especially chap. 6. For the routine participation in thirteenth-century slaveholding see Larry J. Simon, "The Church and Slavery in Ramon Llull's Majorca," in *Iberia and the Mediterranean World of the Middle Ages*, 1: 345–63. On slavery in the *Partidas* see María del Carmen Carlé, "La servidumbre en las *Partidas*," *Cuadernos de historia de España* 12 (1949): 105–19; and J. A. Doering, "La situación de los esclavos a partir de las *Siete Partidas* de Alfonso el Sabio," *Folia humanistica* 4 (1966): 337–61. Cf. Craddock, *Legislative Works*, nos. C145 (Carlé) and C212 (Doering).

30. Shlomo Goitein, *A Mediterranean Society: The Jewish Communities of the Arab World as Portrayed in the Documents of the Cairo Geniza*, 6 vols. (Berkeley: University of California Press, 1967–93), 1: 130–47, one of the best depictions of Mediterranean slavery, applicable as here to the Spanish Christian experience.

31. Phillips, *Slavery*, 108; Burns, "Interactive Slave Operations: Muslim-Christian-Jewish Contracts in Thirteenth-Century Barcelona," *Medieval Encounters: Jewish, Christian, and Muslim Culture in Confluence and Dialogue* 5 (1999): 135–55.

32. Goitein, *Mediterranean Society*, 1: 142–43, 145.

term “captives”). As part of the inevitable human situation, it had a background in the scriptures of all three Mediterranean peoples that seemed to lend it legitimacy. As with the immense prison populations of today’s United States, arguably a form of slavery, medieval people could imagine no alternative. Medieval slaves had human rights but no civil rights; the *paterfamilias* normally represented them in court as he represented his wife. Though slaves were not simply chattel, as in ancient Rome and to a large degree in pre-Civil War America, they were in many ways at the mercy of their masters. The peculiar situation within the family explains Alfonso’s situating slavery within this *partida*. The suitability of that location also appears from the king’s explanation of family in his legal definitions at the very end of the *Partidas*. “By the word ‘family’ is understood the master, his wife, and all those who live under him and over whom he has control, as for instance his children, servants, and other descendants,” though for legal purposes “any number less than” two persons “under the orders of the master” do not “constitute a family.”

The matching titles on “Liberty” and “Slaves” complement each order. Alfonso roundly asserts that “slavery is the vilest thing in this world except sin,” while liberty “is one of the most honorable and precious things of this world.” All creatures, especially humans and especially “noble minds,” do “naturally love and desire liberty.” Though slavery is “contrary to human reason,” nevertheless it has ancient legitimacy from prisoners of war in the Roman Empire accepting the condition instead of execution. Indeed a slave is defined as “an enemy of the faith” captured in war, or else his and her descendants, plus those free people who voluntarily surrender themselves into debt slavery somewhat like indentured servants. A slave is bound to obey, protect, and help the master and the master’s family, and to yield all possessions and earnings to the master’s control. The master has full “authority,” though he cannot strike the slave unreasonably and can wound or kill him only with a judge’s order (unless “he finds him with his wife or daughter”). Against brutal treatment a slave can appeal to the local judge. In mixed marriages of slave and free, the child’s status follows that of the mother, the reverse of usual civil law. An erring priest’s child becomes a slave as the property of the father’s church. Slavery is the penalty for the “great wickedness” of aiding the Muslim enemy by selling “arms of wood and iron, or galleys or ships,” or by “piloting or navigating” for the Muslims.

The master can liberate his slave by a document or personal statement using five witnesses, or as a piety in his will, or more informally if the slave is a relative or has been the master’s former tutor or nurse. A slave wins automatic freedom by informing on counterfeiters, traitors, or “a man who has violated or carried off a virgin.” Marriage to a free male or female automatically enfranchises, as does clerical ordination. Legally baptism frees the ex-Muslim, but real life resisted this obvious path to freedom. Freedom also comes from living in good faith as free for ten years (twenty if abroad), or as a fugitive for thirty years, or as an escapee to a Muslim land. Freedom conferred by a master from good will makes him the ex-slave’s “patron” to whom deference, public marks of honor, and other obligations are owed. A serious crime against that relationship could bring reenslavement.

The United States was to borrow from Alfonso’s slave code, since English common law had none; some of the worst features of imperial Rome’s law also prevailed here, which state laws sometimes ameliorated. Alfonso’s slaves escaped those imperial patterns. They had another advantage over the American system. The slaves of Alfonso’s Spain physically resembled their masters as a rule, and their social and economic levels were reasonably equivalent to those of their masters, with a consequent degree of social assimilation possible.

On the other hand the Muslim-Christian divide was decisive in myriad and subtle ways; and the slave in Spain normally remained outside the kinship structures of the larger community and outside both the Mudejar and the Christian support systems. Finally an ill-documented and unstudied aspect of Spain's medieval slavery was the intimate domestic intermixture of Muslim and Christian, surely more decisive for general cultural interborrowings and mutual acceptance than the better known convergence of Mudejar and Christian communities.

Two short titles prepare the reader for the next level of relationships, vassalage. The first title explains that one's "status" or standing indicates a condition and implied lifestyle, many and varied before the law, embracing such contraries as clergy versus laity, nobles versus commoners, legitimates versus bastards, or Christians versus Moors or Jews. A man's status "is superior to that of women in many things and many respects." A newborn of monstrous form does not have the status of child unless the general form is human. Besides status, a "natural relationship" is "the obligation to love and cherish" someone "for some just reason." There are obligations to love and honor God, parents, nurse ("who brought him up"), tutor (a kind of "father"), and country ("love it, add to it, and die for it where necessary"). A hierarchy of ten natural relationships includes by vassalage, by knighthood, by marriage, by inheritance, by nurture, by rescue, by subjection to a ruler, by emancipation, by conversion, and by new citizenship.

VASSALS: FEUDAL LAW

"Feudalism" is an invention of the eighteenth-century Enlightenment, a mental construct that has now fallen upon hard days. Before that contrivance, from the twelfth century onward, only "feudal law" existed, meaning the mutual relations between a lord and vassal together with the concomitant dependent land tenure or fief. Chaotic custom law regulated that situation, eventually codified from the eleventh into the thirteenth centuries.³³ An example of such restricted codes was the famous *Usatges* of Barcelona, finalized around 1150, a law of practices about fiefs and lord-vassal relations.³⁴ Nineteenth- and twentieth-century historiography spawned creative schools about "feudal society," "feudalism," and the "feudal system," both ambitious and reductive. Spain became largely exempt from such schemes, especially under the immense influence of Claudio Sánchez-Albornoz and his followers; feudalism in Spain was seen as abortive, "immature," in-existent, or at least unlike classic trans-Pyrenean prototypes. In the post-Franco era however, and ironically just as European feudalism in general was being rejected as a useful concept, many Spanish historians have embraced various feudalisms as identifying Spain with the trans-Pyrenean modern nations of the evolving European union. Marxist, nationalist, post-nationalist, and archaeological ruminations promoted the new ideology; some now saw it as the key to Spanish history.

Peter Linehan in his magisterial *History and Historians of Medieval Spain* reviews this record of "sublime meaninglessness" and amusingly scolds its practi-

33. Harold J. Berman, *Law and Revolution: The Formation of Western Legal Tradition* (Cambridge, Mass.: Harvard University Press, 1983), chap. 9 on "Feudal Law"; cf. chap. 10 on "Manorial Law." Still relevant is E. A. R. Brown, "The Tyranny of a Construct: Feudalism and Historians of Medieval Europe," *American Historical Review* 79 (1974): 1063–88.

34. *The Usatges of Barcelona: The Fundamental Law of Catalonia*, trans. Donald J. Kagay (Philadelphia: University of Pennsylvania Press, 1994), including extensive analysis of feudal law in Europe and Catalonia; see especially "Law of Lords, Law of Vassals" on 39–44 and the glossary of legal terms.

tioners.³⁵ As the older feudalisms have become more propagandistic and less plausible, however, an entirely new doctrine has arisen in Italy under the aegis of Pierre Toubert, and has spread to Spain. This “Mediterranean feudalism” argues for an eleventh-century “regrouping” of previously dispersed populations around castles from the eleventh century, not for protection but “to dominate” and enforce a local tyranny or authority on its populace and against other castles.³⁶ In Castile this *incastellamento* eventually incorporated fortified towns into the system. Such theory-driven models attract passionate loyalty, so the debate will continue.

What King Alfonso offers in this *partida*, however, is the pre-Enlightenment practice of feudal law about vassals and lords. Even there, he presents it as one of those “natural relationships” that extend the family; military and other aspects he refers back to the previous *partida*. Alfonso defines vassalage as “a great and important debt” or “obligation” between lord and vassal. A lord can be either someone holding district authority (all subjects call him lord) or one who can “arm and create knights” (only his vassals call him lord). A vassal is anyone “who receives honors and benefits” from a lord, such as knighthood, land, or money, in return for obligatory services. The five modalities of this relationship are: king/subjects, lord/vassal, lord/estate subjects, father/child, and master/slave. One enters vassalage either by simply commending oneself and kissing the lord’s hand, or else by solemn homage ceremonies when obligations are formally contractual. But an element of homage is involved for anyone “in all other contracts or agreements.” Alfonso lists the times when, by “the custom of Spain,” a vassal must kiss the lord’s hand, and notes their mutual obligations of respect and aid by which “true affection increases.” A vassal can dissolve the relationship at will ceremonially.

A corresponding title on fiefs defines them as land held for life or else an annual sum at the lord’s pleasure (presumably including offices at times). Unlike a fief, a third situation, called an “honor” or grant of royal revenues of a place, does not involve a contract to render “some special service.” Alfonso explains who can create vassals, with what investiture ceremonies, with what inheritance or renewal rights; and by what heinous actions one can forfeit the lord’s obligations. Finally the king relates the arbitral due process for resolving disputes a vassal has with his lord, a fellow vassal, or a stranger.

FRIENDS: THE NOBLEST RELATIONSHIP

The fourth *partida* has thus far explored domestic relationships in their familiar and household components, as well as in those wider obligations that root a person into psychologically defining religious, political, and status relationships. Alfonso now closes with a treatise on friendship. The modern eye sees such a sequence as diminishing from the intimate to the ever more general and impersonal. The medieval man saw

35. Peter Linehan, *History and Historians of Medieval Spain* (Oxford: Clarendon Press, 1993), 192–200, cf. 228–32. A classic statement of the Sánchez-Albornoz school is Hilda Grassotti, *Las instituciones feudo-vasalláticas en León y Castilla*, 2 vols. (Spoleto: Centro Italiano di Studi sull’ Alto Medioevo, 1969). See also the transformative thesis of José Antonio Maravall, “Del régimen feudal al régimen corporativo en el pensamiento de Alfonso X,” *Boletín de la Real academia de la historia* 157 (1965): 213–66; and Robert S. Chamberlain, “The Concept of *Señor Natural* as Revealed by Castilian Law and Administrative Documents,” *Hispanic American Historical Review* 19 (1939): 130–37. Cf. Craddock, *Legislative Works*, nos. C324 (Grassotti), C 439 (Maravall), and C172 (Chamberlain). More recently, see Reyna Pastor, “Formación y consolidación del feudalismo castellano-leonés, siglos X–XIII,” in *Los orígenes del feudalismo en el mundo mediterráneo* (Granada: Universidad de Granada, 1994), 119–39; and Bonnassie, *From Slavery to Feudalism*, chaps. 3, 5–7.

36. Thomas F. Glick, “The Transition to Feudalism,” in his *From Muslim Fortress to Christian Castle: Social and Cultural Change in Medieval Spain* (Manchester: Manchester University Press, 1995), chap. 4, assessing recent contributors to the debate, especially 105–13 on *incastellamento*.

it instead as the capstone in this exposition of intimate relationships, where friendship was the rarest and noblest of human unions. The Middle Ages inherited that venerable philosophy from classical Greece and Rome, especially as codified by Aristotle and Cicero. The ancient world had distinguished benevolent attraction to someone as based on the other person's usefulness or pleasure-giving qualities, as against a mutual and enduring attraction based on a selfless agreement of tastes, thoughts, and wills. Aristotle's "one soul in two bodies" was the latter, a relationship of empathy, always growing by frequent interchanges and cultivation.

Such friendship was possible only between the truly good, it was held, and was relatively rare. The classic exposition, familiar to Alfonso's academics, was Aristotle's *Nichomachean Ethics*, here laid under heavy tribute, and Cicero's *On Friendship* (*De amicitia*). The theme echoed also through treatments by Augustine and in Alfonso's day by Thomas Aquinas. Some medieval authors subsumed friendship into Christian charity, thus making it less exclusive and discriminating. Aelred's "On Spiritual Friendship" (*De spiritali amicitia*) in the twelfth century put the behavior into a Christological framework. Aquinas among others moved from human friendship, as essentially spiritual, to a divine friendship between man and God.³⁷ As always, the legal code is conservative, incorporating traditional authors and wisdom, but with a fresh organization and expression, the past as re-creation. Both the Muslim and Jewish world shared the ancient traditions on friendship, and it is instructive to compare their respective assimilations of that heritage. A Jewish, biblically based form of the highest friendship bond was the ceremony of "covenant" (*berith*), analogous to the commitment ritual seen in the next paragraph.³⁸

Friendship was a ubiquitous theme in Spanish letters. As Marilyn Stone observes, it was "a medieval topos of great import in oral, literary, and philosophical traditions."³⁹ So exalted was the medieval concept of friendship bonding that the church in its Eastern branch deployed, from the ninth century on, a liturgy for consecrating or committing two friends. Understood then in the context of mutual adoption, the practice has attracted wide notice today due to its ludicrous misunderstanding as a homosexual marriage by an advocacy historian of homosexuality.⁴⁰

Alfonso is thus in a medieval intellectual mainstream. His treatise deserves an honored place in the long Western tradition of friendship ponderings that go back beyond Socrates and forward into modern times. Alfonso cites Aristotle directly here

37. Marie Aquinas McNamara, O.P., *Friends and Friendship for Saint Augustine* (Staten Island, N.Y.: Alba House, 1957), a doctoral dissertation from Fribourg University; see especially chap. 4. Aquinas, *St. Thomas Aquinas on Aristotle's Love and Friendship*, trans. Pierre Conway, O.P. (Providence, R.I.: Providence College, 1951); Jerome Wilms, O.P., *Divine Friendship According to Saint Thomas* (Dubuque, Iowa: Priory Press, 1958); Aelred, *Aelred of Rievaulx's Spiritual Friendship*, trans. Mark F. Williams (Scranton, Pa.: University of Scranton Press, 1994). See also David Konstan, *Friendship in the Classical World* (Cambridge: Cambridge University Press, 1997), with attention to the Christian transformation; Caroline White, *Christian Friendship in the Fourth Century* (Cambridge: Cambridge University Press, 1992); Reginald Hyatte, *The Arts of Friendship: The Idealization of Friendship in Medieval and Early Renaissance Literature* (Leiden: E.J. Brill, 1994), from the twelfth through the fifteenth centuries; and Julian Haseldine, ed., *Friendship and Friendship Networks in the Middle Ages* (Herndon, Va.: Sutton, 1998).

38. Goitein, *Mediterranean Society*, 5: 272–97 on "Friendship," 296 on *berith*.

39. Stone, *Marriage and Friendship in Medieval Spain*, 115. Chap. 5, "Friendship," relates the literary background in Castile, and especially the many borrowings from Aristotle's *Nichomachean Ethics*. She suggests Boethius as a probable influence and notes the debt to Arabic writers. Other treatments of the theme for Spain include María Isabel Alfonso de Saldaña, "Sobre la 'amicitia' en la España medieval," *Boletín de la Real academia de la historia* 170 (1973): 379–86; Rainaldo Ayerbe Chaux, "El concepto de la amistad en la obra del infante don Juan Manuel," *Thesaurus* 24 (1969): 37–49; and the short translation of this *partida* title by J. Horace Nunemaker, "Alfonso the Wise on Friendship," *Modern Language Forum* 18 (1935): 97–99 (cf. Craddock, *Legislative Works*, no. C502).

40. John Boswell, *Same-Sex Unions in Premodern Europe* (New York: Villard Books, 1994). See Robin D. Young, "Gay Marriage: Reimagining Church History," *First Things* 47 (November 1994): 43–48, including a description of the ceremony (for two women) surviving in today's Syrian Orthodox church. See too Patrick Viscuso, "Failed Attempt to Rewrite History," *New Oxford Review* 61 (1994): 29–31.

no fewer than six times and Cicero ("Tullio") four times, with a nod also to Augustine. He distinguishes the kinds of friendship with Aristotle as embracing merely utilitarian affection for advantage or pleasure; merely natural as directed toward parents, spouse, countrymen, and the like; and the friendship of love. "There is another kind of friendship which exists according to the custom of Spain," Alfonso notes, by which "in former times" nobles under a pact of concord promised to give notice to a friend before injuring or dishonoring him, a "renouncing" or challenge that ended the friendship.⁴¹

Alfonso recounts the practical and psychological benefits of friendship, gives rules for how to keep a friend (be loyal, speak well of him, do not reveal secrets, do good to him, and share with him), and warns about actions that destroy friendship. He avoids the Christological or caritative schools. Unlike Gregory the Great for example,⁴² who expected all Christians to find friends to help them on their journey to God, Alfonso follows the ancients in concluding that "there are not many persons between whom perfect friendship exists." Those who do enjoy disinterested friendship, however, experience a union to a greater degree profound and ennobling than the more utilitarian and reciprocally advantageous marriage bond.

SUGGESTIONS FOR READING

This list includes materials from the footnotes with some representative general works around the *partida*'s familial themes, where possible in English and for Spain.

- Alfonso de Saldaña, María Isabel. "Sobre la 'amicitia' en la España medieval." *Boletín de la Real academia de la historia* 170 (1973): 379–86.
- Aelred. *Aelred of Rievaulx's Spiritual Friendship*. Trans. Mark F. Williams. Scranton, Pa.: University of Scranton Press, 1994.
- Aquinas, Thomas. *St. Thomas Aquinas on Aristotle's Love and Friendship*. Trans. Pierre Conway, O.P. Providence, R.I.: Providence College, 1951.
- Ayerbe Chaux, Rainaldo. "El concepto de la amistad en la obra del infante don Juan Manuel." *Thesaurus* 24 (1969): 37–49.
- Beceiro Pita, Isabel and Ricardo Córdoba de la Llave. *Parentesco, poder y mentalidad: la nobleza castellana, siglos XII–XV*. Madrid: Consejo Superior de Investigaciones Científicas, 1990.
- Belda Soler, M. A. *El régimen matrimonial de bienes en los "Furs de Valencia"*. Valencia: Editorial Cosmos, 1965.
- Bensch, Stephen P. *Barcelona and Its Rulers, 1096–1291*. Cambridge: Cambridge University Press, 1995. 234–76.
- . "From Prizes of War to Domestic Merchandise: The Changing Faces of Slavery in Catalonia and Aragon, 1000–1300." *Viator* 25 (1994): 63–93.
- Berman, Harold J. *Law and Revolution: The Formation of Western Legal Tradition*. Cambridge, Mass.: Harvard University Press, 1983.
- Bonnassie, Pierre. *From Slavery to Feudalism in South-Western Europe*. Cambridge: Cambridge University Press, 1991.
- Boswell, John. *Same-Sex Unions in Premodern Europe*. New York: Villard Books, 1994.
- Brodman, James. *Ransoming Captives in Crusader Spain: The Order of Merced on the Christian-Islamic Frontier*. Philadelphia: University of Pennsylvania Press, 1986.
- Brown, E. A. R. "The Tyranny of a Construct: Feudalism and Historians of Medieval Europe." *American Historical Review* 79 (1974): 1063–88.
- Brundage, James A. "Concubinage and Marriage in Medieval Canon Law." *Journal of Medieval History* 1 (1975): 1–17.
- . *Law, Sex, and Christian Society in Medieval Europe*. Chicago: University of Chicago Press, 1987.

41. Stone explains these pacts in *Marriage and Friendship*, 121–22.

42. Carole Straw, *Gregory the Great: Perfection in Imperfection* (Berkeley: University of California Press, 1988), 93–94.

- . "Sexual Equality in Medieval Canon Law." In *Medieval Women and the Sources of Medieval History*, ed. Joel T. Rosenthal. Athens: University of Georgia Press, 1990. 66–79.
- Burman, Thomas. "The Rearing of Children in the *Siete Partidas* of Alfonso X." *Scintilla* (University of Toronto) 5 (1988): 44–71.
- Burns, Robert I., S.J. *The Crusader Kingdom of Valencia: Reconstruction on a Thirteenth-Century Frontier*. 2 vols. Cambridge, Mass.: Harvard University Press, 1967.
- . "Daughter of Abū Zayd, Last Almohad Ruler of Valencia: The Family and Christian Seigniorship of Alda Ferrándis, 1236–1300." *Viator* 24 (1993): 143–87.
- . "Interactive Slave Operations: Muslim-Christian-Jewish Contracts in Thirteenth-Century Barcelona." *Medieval Encounters: Jewish, Christian, and Muslim Culture in Confluence and Dialogue* 5 (1999): 135–55.
- . "Women in Crusader Valencia: A Five-Year Core Sample 1265–1270." *Medieval Encounters: Jewish, Christian, and Muslim Culture in Confluence and Dialogue* 6 (2000).
- Carlé, María del Carmen. "La servidumbre en las *Partidas*." *Cuadernos de historia de España* 12 (1949): 105–19.
- La condición de la mujer en la edad media: coloquio celebrado en la Casa de Velázquez*. Madrid: Casa de Velázquez/Universidad Complutense, 1986.
- Coutin, Lourdes G. "Situación social de la mujer en las *Siete partidas*." Unpublished master's thesis, University of Miami, Coral Gables, 1967.
- Craddock, Jerry R. *The Legislative Works of Alfonso X, el Sabio*. Research Bibliographies and Checklists 45. London: Grant and Cutler, 1986.
- Dillard, Heath. *Daughters of the Reconquest: Women in Castilian Town Society, 1100–1300*. Cambridge: Cambridge University Press, [1984] 1989.
- Doering, J. A. "La situación de los esclavos a partir de las *Siete Partidas* de Alfonso el Sabio." *Folia humanistica* 4 (1966): 337–61.
- Domínguez Rodríguez, Ana. "Imágenes de la mujer en las Cantigas de Santa María." In *La imagen de la mujer en el arte español*. Jornadas de Investigación Interdisciplinaria 3. Madrid: Seminario de Estudios de la Mujer de la Universidad Autónoma, 1984. 29–42.
- Duby, Georges. *Medieval Marriage: Models from Twelfth-Century France*. Baltimore: Johns Hopkins University Press, 1978.
- . *Love and Marriage in the Middle Ages*. Chicago: University of Chicago Press, 1994.
- Echániz Sans, María. *Los mujeres de la orden militar de Santiago en la edad media*. Salamanca: Junta de Castilla y León, 1992.
- Estow, Clara. "Widows in the Chronicles of Late Medieval Castile." In *Upon My Husband's Death: Widows in the Literature and Histories of Medieval Europe*, ed. Louise Mirrer. Ann Arbor: University of Michigan Press, 1992. 153–67.
- Fernández Regatillo, Eduardo. "El derecho matrimonial en las *Partidas* y en las *Decretales*." In *Congressus iuridici internationalis VII saeculo a Decretalibus Gregorii IX et XIV a codice iustiniano promulgatis*. 5 vols. Rome: Libreria Instituti Utriusque Iuris, 1935–37. 3: 317–84.
- Gibert y Sánchez de la Vega, Rafael. "El consentimiento familiar en el matrimonio según el derecho medieval español." *Anuario de historia del derecho español* 18 (1947): 706–61.
- Giménez y Martínez de Carvajal, José. "El derecho matrimonial en las '*Partidas*' de Alfonso X el Sabio." Unpublished doctoral dissertation, Universidad de Granada, 1960.
- Gimeno Casaldueño, Joaquín. "Alfonso el Sabio: el matrimonio y la composición de las *Partidas*." *Nueva revista de filología hispánica* 36 (1988), 203–18.
- Glick, Thomas F. *From Muslim Fortress to Christian Castle: Social and Cultural Change in Medieval Spain*. Manchester: Manchester University Press, 1995.
- Goitein, Shlomo. *A Mediterranean Society: The Jewish Communities of the Arab World as Portrayed in the Documents of the Cairo Geniza*. 6 vols. Berkeley: University of California Press, 1967–93.
- Goody, Jack. *The Development of the Family and Marriage in Europe*. Cambridge: Cambridge University Press, 1983.
- Grassotti, Hilda. *Las instituciones feudo-vasalláticas en León y Castilla*. 2 vols. Spoleto: Centro Italiano di Studi sull'Alto Medioevo, 1969.
- Haseldine, Julian, ed. *Friendship and Friendship Networks in the Middle Ages*. Herndon, Va.: Sutton Publishing, 1998.
- Heer, Jacques. *Esclaves et domestiques au moyen âge dans le monde méditerranéen*. Paris: Fayard, 1981.
- Herlihy, David. *Opera Muliebria: Women and Work in Medieval Europe*. New York: McGraw-Hill, 1990.
- Hyatte, Reginald. *The Arts of Friendship: The Idealization of Friendship in Medieval and Early Renaissance Literature*. Leiden: E.J. Brill, 1994.
- Jarrett, Bede, O.P. *Social Theories of the Middle Ages, 1200–1500*. London: Frank Cass and Co., 1968.

- Kagay, Donald J., trans. *The Usatges of Barcelona: The Fundamental Law of Catalonia*. Philadelphia: University of Pennsylvania Press, 1994.
- Kelly, Henry Ansgar. "Clandestine Marriage and Chaucer's 'Troilus.'" *Viator* 4 (1973): 435–57.
- Konstan, David. *Friendship in the Classical World*. Cambridge: Cambridge University Press, 1997.
- Lansing, Ruth. "The Thirteenth-Century Legal Attitude Toward Women in Spain." *Publications of the Modern Language Association* 36 (1921): 492–507.
- Linehan, Peter. *History and Historians of Medieval Spain*. Oxford: Clarendon Press, 1993.
- Maldonado y Fernández del Torco, José. "Sobre la relación entre el derecho de las *Decretales* y el de las *Partidas* en materia matrimonial." *Anuario de historia del derecho español* 15 (1944): 589–643.
- Maravall, José Antonio. "Del régimen feudal al régimen corporativo en el pensamiento de Alfonso X." *Boletín de la Real academia de la historia* 157 (1965): 213–66. Also in his *Estudios de historia del pensamiento español: edad media*. Madrid: Cultura Hispánica, 1967–84. 87–140.
- Martínez Marcos, Esteban. *Las causas matrimoniales en las "Partidas" de Alfonso el Sabio*. Salamanca: Consejo Superior de Investigaciones Científicas, Instituto San Raimundo de Peñafort, 1966.
- . "Fuentes de la doctrina canónica de la IV *Partida* del código del rey Alfonso el Sabio." *Revista española de derecho canónico* 18 (1963): 897–926.
- McMillin, Linda A. "Cloister and Society in Thirteenth-Century Barcelona: The Women of Sant Pere de les Puel·les." Unpublished doctoral dissertation, University of California at Los Angeles, 1990.
- . "Women on the Walls: Women and Warfare in the Catalan Grand Chronicles." *International Catalan Review* 3 (1989): 123–36.
- . "Sacred and Secular Politics: The Convent of Sant Pere de les Puel·les in Thirteenth-Century Barcelona." In *Iberia and the Mediterranean World of the Middle Ages: Studies in Honor of Robert I. Burns, S.J.*, ed. Larry J. Simon (vol. 1), Paul E. Chevedden, Donald J. Kagay, and Paul G. Padilla. 2 vols. Leiden/New York: E.J. Brill, 1995–96. 2: 225–37.
- McNamara, Marie Aquinas, O.P. *Friends and Friendship for Saint Augustine*. Staten Island, N.Y.: Alba House, 1957.
- McVaugh, Michael. *Medicine Before the Plague: Practitioners and Their Patients in the Crown of Aragon, 1285–1345*. Cambridge: Cambridge University Press, 1993.
- Mirrer, Louise. *Women, Jews, and Muslims in the Texts of Reconquest Castile*. Ann Arbor: University of Michigan Press, 1996.
- Las mujeres medievales y su ámbito jurídico*. Ed. Cristina Segura Graiño. Jornadas de Investigación Interdisciplinaria 2. Madrid: Universidad Autónoma, 1983.
- Muñoz Fernández, Angela and Cristina Segura Graiño, eds. *El trabajo de las mujeres en la edad media hispana*. Madrid: Asociación Cultural al-Mudayna, 1988.
- Noonan, John T. "Marriage in the Middle Ages: Power to Choose." *Viator* 4 (1973): 419–34.
- . "Marital Affection in the Canonists." *Studia gratiana* 12 (1967): 479–509.
- Nunemaker, J. Horace. "Alfonso the Wise on Friendship." *Modern Language Forum* 18 (1935): 97–99.
- Onomàstica barcelonina del segle XIV*. Ed. Francisco Marsá et al. Barcelona: Universidad de Barcelona, 1977.
- Otero Varela, Alfonso. "La patria potestad en el derecho histórico español." *Anuario de historia del derecho español* 26 (1956): 209–41.
- . "Sobre la realidad histórica de la adopción." *Anuario de historia del derecho español* 27–28 (1957–58): 143–49.
- Padilla, Paul G. "The Transport of Muslim Slaves in Fifteenth-Century Valencia." In *Iberia and the Mediterranean World of the Middle Ages: Studies in Honor of Robert I. Burns, S.J.*, ed. Larry J. Simon (vol. 1), Paul E. Chevedden, Donald J. Kagay, and Paul G. Padilla. 2 vols. Leiden/New York: E.J. Brill, 1995–96. 2: 379–93.
- Pastor, Reyna. "Formación y consolidación del feudalismo castellano-leonés, siglos X–XIII." In *Los orígenes del feudalismo en el mundo mediterráneo*. Granada: Universidad de Granada, 1994. 119–39.
- Pescatello, Ann M. *Power and Pawn: The Female in Iberian Families, Societies, and Cultures*. Westport, Conn.: Greenwood Press, 1976.
- Phillips, William D., Jr. *Historia de la esclavitud en España*. Madrid: Editorial Playor, 1990.
- . *Slavery from Roman Times to the Early Transatlantic Trade*. Minneapolis: University of Minnesota Press, 1985.
- Pinedo Puebla, Pablo and Juan Antonio Arias Bonet. "Monaldo y las *Partidas*." *Anuario de historia del derecho español* 41 (1971): 687–97.
- Ratcliffe, Marjorie. "Adulteresses, Mistresses, and Prostitutes: Extramarital Relationships in Medieval Castile." *Hispania* 67 (1984): 346–50.
- Scarborough, Connie L. *Women in Thirteenth-Century Spain as Portrayed in Alfonso X's Cantigas de Santa Maria*. Lewiston, N.Y.: Edwin Mellen, 1993.

- Segura Graiño, Cristina. "Las mujeres en el medioevo hispano." *Cuadernos de investigación medieval* 1 (1984): 7–56.
- Simon, Larry J. "The Church and Slavery in Ramon Llull's Majorca." In *Iberia and the Mediterranean World of the Middle Ages: Studies in Honor of Robert I. Burns, S.J.*, ed. Larry J. Simon (vol. 1), Paul E. Chevedden, Donald J. Kagay, and Paul G. Padilla. 2 vols. Leiden/New York: E.J. Brill, 1995–96. 1: 345–63.
- Sponsler, Lucy A. "The Status of Married Women under the Legal System of Spain." *Journal of Legal History* 9 (1982): 125–52.
- Steffen, Christine C. "Women in *Las Siete partidas* of Alfonso X de Castilla y León." Unpublished doctoral dissertation, University of Texas, 1979.
- Stone, Marilyn. *Marriage and Friendship in Medieval Spain: Social Relations According to the Fourth Partida of Alfonso X*. New York: Peter Lang, 1990.
- Stone, Marilyn and Carmen Benito-Vessels, eds. *Women at Work in Spain: From the Middle Ages to Early Modern Times*. New York: Peter Lang, 1998.
- Surtz, Ronald E. *Women in Late Medieval and Early Modern Spain: The Mothers of St. Teresa of Avila*. Philadelphia: University of Pennsylvania Press, 1995.
- Vann, Theresa M., ed. *Queens, Regents and Potentates*. Cambridge: Academia Press; Rochester, N.Y.: Boydell and Brewer, 1993.
- Verlinden, Charles. *L'esclavage dans la Europe médiévale*. 2 vols. Bruges: Universiteit te Gent, 1955–77.
- Vincke, Joannes. "Königtum und Sklaverei in aragonischen Staatenbund während des 14. Jahrhunderts." *Spanische Forschungen der Görresgesellschaft, Gesammelte Aufsätze zur Kulturgeschichte Spaniens* 25 (1970): 19–112.
- Vinyoles i Vidal, Teresa-Maria. "L'amor i la mort al segle XIV: cartes de dones." *Miscel·lània de textos medievals* 8 (1996): 111–98.
- . *Les barcelonines a les darreries de l'edat mitjana (1370–1410)*. Barcelona: Fundació Salvador Vives Casajuana, 1976.
- Viscuso, Patrick. "Failed Attempt to Rewrite History." *New Oxford Review* 61 (1994): 29–31.
- White, Caroline. *Christian Friendship in the Fourth Century*. Cambridge: Cambridge University Press, 1992.
- Wilms, Jerome, O.P. *Divine Friendship According to Saint Thomas*. Dubuque, Iowa: Priory Press, 1958.
- Winer, Rebecca Lynn. "Silent Partners? Women, Commerce, and the Family in Medieval [Catalan] Perpignan, c. 1250–1300." Unpublished doctoral dissertation, University of California at Los Angeles, 1996.
- Young, Robin D. "Gay Marriage: Reimagining Church History." *First Things* 47 (November 1994): 43–48.

INTRODUCTION TO THE FIFTH PARTIDA

Alfonso and his lawyers had devoted their first three *partidas* respectively to godliness, governance, and law itself, foundational topics that could claim pride of place. In a surprise move, the king had then selected marriage and the family as his keystone *partida*. He positioned it between the three universal foundations and the less universally significant final three (respectively the worlds of the merchants, the affluent who left last testaments, and the criminals). If the final three are less universal in directly touching all the king's subjects, however, they are certainly an inevitable part of any law code of the era. Even in less developed times and countries, the merchant's world framed that of ordinary folk, while many people would find themselves at least sometimes buying or selling, lending or borrowing, paying wages or rent, making gifts, pledges, or some sort of contract, and depending upon markets or fairs.

Such activities partake of the universal and properly precede the more limited final categories of last wills and criminals. It is fitting also that contracts appear just after the marriage treatise, which dealt with a covenantal relationship as the most common of contracts. A more natural sequence, other jurists thought, would have explained contracts and only afterward marriage. In any case Alfonso spares 168 pages (in this translation) for a business code, as against more than 260 pages to each of the first two *partidas*, 344 to the third, and 130 to the fourth. Despite that limitation of space, the king achieves a comprehensive, unhurried overview, more than adequate to the desperate business needs of his day.

THE COMMERCIAL REVOLUTION

Those needs had grown so imperative as to recommend more urgently a business code than the various other codes in the *Partidas*, even though a greater theoretical dignity dictated the placing of those other codes. Alfonso's generation, and the period 1250 to 1350 generally, were experiencing the culmination of a "Commercial Revolution" which transformed every facet of Europe's economic and maritime life. From around the year 1000, as the economic historian Robert Lopez notes, a long curve began "of almost unbroken economic expansion of the Mediterranean peoples, an expansion of production and consumption in the home market, of overseas trade to the commercially advanced regions, [and] of land commerce over formerly stagnant areas." This "startling surge does not slacken its pace until the onset of the great depression of the mid-fourteenth century," after which "it moves forward again" into "that further expansion which culminates in the Industrial Revolution of modern and contemporary times." In a narrower definition, the "Commercial Revolution" would apply "only to the last stage in the medieval commercial expansion from the thirteenth century onwards." Lopez contrasts this curve with the ancient world, where "economic development in each of its premedieval phases came to a full stop" before the ceiling of "an underdeveloped society was broken." The medieval phenomenon, by contrast, "created the indispensable material and moral conditions for

a thousand years of virtually uninterrupted growth; and, in more than one way, it is still with us."¹

Europe's conquest and domination of the Byzantine empire from 1204, and the Mongol shattering of Islam's eastern caliphate, as well as the collapse of the great Almohad empire in North Africa and Spain, all at roughly the same time, contributed powerfully to European domination of Mediterranean trade by Alfonso's day. Janet Abu-Lughod and other scholars have delineated the global dimension of this phenomenon, describing a unique "thirteenth-century world system" in which Europe became a partner. "The second half of the thirteenth century was a remarkable moment in world history," Abu-Lughod remarks; "never before had so many regions of the Old World come in contact with one another, albeit still only superficially." Between 1250 and 1350 "an international trade economy was developing that stretched all the way from northwestern Europe to China," concomitant with a cultural flowering in the European, Indic, Chinese, and Islamic regions. The global situation operated through three major systems; these in turn were "organized into some eight interlinked sub-systems," each holding various "smaller trading circuits." Breaking into the sub-systems brought great prosperity, so that a kind of mercantile gold rush was on, harried by trade wars and privateer piracy. Even in the more rarified overseas trade into China, enough merchants regularly traveled out of Italian city-states to warrant a popular guidebook about travel patterns, foreign idiosyncrasies, money-exchange, and language in China and its approaches.²

Spain was advantageously situated to profit from this pan-Mediterranean world trade. The realms of Arago-Catalonia would spread a commercial network of Catalan trade consulates around the Mediterranean and would conquer or effectively absorb into that network the Islamic Balearic Islands, Hohenstaufen Sicily, Sardinia, and Athens, with a hegemony over foreign trade coming through Tunis and through Alexandria in Egypt. Arago-Catalan conquest of the Valencian and Majorcan regions removed from Islamic control the circle trade by sea from North Africa to France and back, and made Hafsid Tunisia a client state of the Barcelona ruler. Castile's concomitant conquest of central al-Andalus, notably Seville in 1248 and Murcia on the Mediterranean in (effectively) 1266 threw open Castile's hitherto land-dominated economy to ever-widening circles of maritime profit both in the Mediterranean and the Atlantic.³

1. Robert S. Lopez and Irving W. Raymond, eds., *Medieval Trade in the Mediterranean World: Illustrative Documents* (New York: Columbia University Press, [1955] 1968), 50; and Lopez, *The Commercial Revolution of the Middle Ages, 950–1350* (Cambridge: Cambridge University Press, 1977), vii.

2. Janet L. Abu-Lughod, *Before European Hegemony: The World System, A.D. 1250–1350* (Oxford: Oxford University Press, 1989), 3–4, 8, 33–34. See too her booklet-synopsis of her theses from the American Historical Association, *The World System in the Thirteenth Century: Dead End or Precursor?* (Washington D.C.: American Historical Association, 1995). Pertinent too are Philip D. Curtin, *Cross-Cultural Trade in World History* (Cambridge: Cambridge University Press, 1984), especially 111–19; Carlo M. Cipolla, *Before the Industrial Revolution: European Society and Economy, 1000–1700* (London: Routledge, 1993), especially pp. 193–203; and for more political context of the interacting five civilizations, Archibald R. Lewis, *Nomads and Crusaders, A.D. 1000–1368* (Bloomington: Indiana University Press, 1988).

3. For trade shifts on the peninsula see Olivia Remie Constable, *Trade and Traders in Muslim Spain: The Commercial Realignment of the Iberian Peninsula, 900–1500* (Cambridge: Cambridge University Press, 1994). For Castile see Teófilo F. Ruiz, "Castilian Merchants in England, 1248–1250," in *Order and Innovation in the Middle Ages: Essays in Honor of Joseph R. Strayer*, ed. William C. Jordan et al. (Princeton, N.J.: Princeton University Press, 1976), 173–85. See also his *Crisis and Continuity: Land and Town in Late Medieval Castile* (Philadelphia: University of Pennsylvania Press, 1994), chap. 7 on trade and merchants. For Catalan trade into North Africa see Charles E. Dufourcq, *L'Espagne catalane et le Maghrib au XIII^e et XIV^e siècles: de la bataille de Las Navas de Tolosa (1212) à l'avènement du sultan mérinide Aboul-Hassan (1331)* (Paris: Presses Universitaires de France, 1966). Useful too is the symposium *Relaciones de la península ibérica con el Magreb, siglos XIII–XVI*, ed. Mercedes García-Arenal and María J. Viguera (Madrid: Consejo Superior de Investigaciones Científicas, 1988). The story is carried forward in the monumental volume by María Dolores López Pérez, *La Corona de Aragón y el Magreb en el siglo XIV (1331–1410)* (Barcelona: Consejo Superior de Investigaciones Científicas,

MERCANTILE LAW: OLD AND NEW

Regulation of trade, commercial litigation, international trade agreements and licensing, the many categories of contracts entering the notarial registers in the towns, the problems of debt and bankruptcy, the hazards of fraud and insurance against risk, the various kinds of partnership and all the mechanisms of credit ("the great lubricant of the Commercial Revolution" and an "altogether novel phenomenon"⁴), the niceties of bookkeeping and usurious loans, and other aspects of a sophisticated and turbulent business world, all demanded "the new system of commercial law."⁵

Commercial law in turn, in its narrower sense of merchant law, grew out of an informal and in theory universal custom or usage, with separate categories for land merchants and sea merchants. Though Romanized to a degree during this medieval stage, the system of merchant law continued a tradition of relative autonomy, partly in forms of adjudication and partly as a body of customs and principles that had evolved as general, highly practical, and essential to any realm's prosperity. Alfonso incorporates its outlines into his more far-reaching commercial code. If merchant law by definition is traditional custom, Alfonso's wider commercial law was marked by novelty, whether in its special understanding of various Roman antecedents, or in its newer context and expression, or finally in some of its content. Even with ancient borrowings, the system and its context were fresh and incipiently modern.

The legal historian Harold Berman lists eighteen "distinctive characteristics of Western mercantile law" that emerged, such as "the development of a bankruptcy law which took into account the existence of a sophisticated system of commercial credit"; the appearance of a "bill of lading and other transportation documents"; expansion of the ancient "sea-loan and invention of the bottomry loan" in order to finance and insure overseas sales; "limitation of claims for breach of warranty"; "the invention of trademarks and patterns"; the joint venture "as a kind of joint-stock company" with limited liability; replacement of the ancient individualistic partnership "by a more collectivist concept in which there was joint ownership" and other unit rights; "the introduction of an objective measure of damages for non-delivery of goods, based on the difference between the contract price and the market price," as well as "introduction of fixed monetary penalties"; the "development of deposit banking"; "sharp separation of the law of movables (chattels) from the law of immovables (land and fixtures attached to land)"; and other inventions or discoveries facilitating commerce.

As a consequence, "a great many if not most of the structural elements of the modern system of commercial law were formed in this period," including "basic legal principles" common to contemporary legal systems and "adapted to the special needs of the mercantile community."⁶ In Mediterranean Europe the ubiquitous notaries poured out a stream of legally binding instruments having the obligation of contracts, all forming part of the organic growth and spreading these novelties.

1995). For Iberian mercantile expansion see too Felipe Fernández-Armesto, *Before Columbus: Exploration and Colonization from the Mediterranean to the Atlantic, 1229–1492* (Philadelphia: University of Pennsylvania Press, 1987), chap. 2 on Castile, chaps. 1 and 3 on Catalan and Murcian regions. For Mediterranean trading cities and merchant classes see for example David Abulafia, *A Mediterranean Emporium: The Catalan Kingdom of Majorca* (Cambridge: Cambridge University Press, 1994), with his "Catalan Merchants and the Western Mediterranean, 1236–1600: Studies in the Notarial Acts of Barcelona and Sicily," *Viator* 16 (1985): 209–242; and Stephen P. Bench, *Barcelona and Its Rulers, 1096–1291* (Cambridge: Cambridge University Press, 1995).

4. Lopez, *Commercial Revolution*, 72.

5. Harold J. Berman, *Law and Revolution: The Formation of the Western Legal Tradition* (Cambridge, Mass.: Harvard University Press, 1983), chap. 11 on "Mercantile Law," quote from 339.

6. *Ibid.*, 349–50.

ALFONSO'S CONTENTS

The commercial bustle and its attendant evolution of Roman antecedents and merchant custom into generalized mercantile law is relevant context for Alfonso's fifth *partida*. He will indeed subsume the general merchant framework, with treatises on merchant organizations and fairs, on maritime commerce and informal merchant courts. But an even more powerful component of the *partida* was the canonist body of law on contracts and business transactions, an elaborately theorized system evolving both from usage and the university, including as well such concerns as the just price, partnership, credit and usury, deposit, debt, surety, and pledge, involving too a corporation law. Such concerns transcended mere merchant custom, were applied to a wider range of the population, and engaged the intense interest and regulation of rulers. The title to this *partida* simplifies its content as: "loans, sales, purchases, and exchanges, and all other contracts and agreements." Roman antecedents for medieval mercantile contracts had been few however, as Lopez notes, and most contracts "are almost certainly medieval innovations."⁷

Alfonso's title encompasses financial and economic activities in the general way of a law code, without attending explicitly to every specific. Thus he does not take up money and the monetarization of the economy, with proliferation of mints, the gold standard (from the florin of Florence in 1252 and the ducat of Venice in 1284, as well as Spain's facsimile Muslim coins), and such attendant phenomena as exchange rates and inflation. Alfonso also does not consider the rise of deposit banking in his century, where moneychangers took deposits from the middle and affluent classes, made frequent loans, paid interest usually for a set term, and supplied capital to mercantile companies.⁸ Other devices common but not relevant to King Alfonso here would include the credit operations by which James the Conqueror financed his conquests and expansion.⁹

Behind the financial progress mirrored in the *partida* was an unending technological revolution which facilitated it—from ship technology, the expanding irrigation networks, the spinning wheel for the textile trade, the multiplying watermills all over Spain geared to power uses of grinding, pounding, sawing, rolling and polishing, and even the gravity artillery or trebuchets that were making wars more expensive.¹⁰ Such larger human context was visible enough to Alfonso and his lawyers, but the

7. Lopez, *Commercial Revolution*, 73. On the elements of this *partida* see Inés Carrasco Cantos, *Estudio del léxico institucional de la Partida V* (Málaga: Universidad de Málaga, 1981). On non-commercial loans see Manuel J. García Garrido, "El comodato en las *Partidas*," in *Estudios jurídicos: homenaje al profesor Alfonso Otero* (Santiago de Compostela: Universidad de Santiago de Compostela, 1981), 85–101. On third parties in contracts see Juan Antonio Arias Bonet, "Estipulaciones en favor de tercero en las glosadores y en las *Partidas*," *Anuario de historia del derecho español* 34 (1964): 235–48. On debtors' prison see Francisco Tomás y Valiente, "La prisión por deudas en los derechos castellano y aragoneses," *Anuario de historia del derecho español* 30 (1960): 249–489. See too the comments on each in Jerry R. Craddock, *The Legislative Works of Alfonso X, el Sabio*, Research Bibliographies and Checklists 45 (London: Grant and Cutler, 1986), nos. C705 (Carrasco), C719 (García), C43 (Arias), and C648 (Tomás).

8. The standard pioneering work on medieval deposit banking devotes extensive coverage to Catalonia from 1240: Abbot P. Usher, *The Early History of Deposit Banking in Mediterranean Europe* (Cambridge, Mass.: Harvard University Press, 1943); Lopez, *Commercial Revolution*, 103–5; Berman, *Law and Revolution*, 352, 355. See especially the symposium *The Dawn of Modern Banking* (New Haven, Conn.: Yale University Press, 1979), especially the studies by Robert Lopez and (on the Arago-Catalan lands) Manuel Riu. For a picture of contemporary banking practice see Edward D. English, *Enterprise and Liability in Sienese Banking, 1230–1350* (Cambridge, Mass.: Medieval Academy of America, 1988).

9. Robert I. Burns, S.J., *Medieval Colonialism: Postcrusade Exploitation of Islamic Valencia* (Princeton, N.J.: Princeton University Press, 1975), especially chaps. 7, 8.

10. Cipolla, *Before the Industrial Revolution*, chap. 6. Lynn White, Jr., *Medieval Religion and Technology: Collected Essays* (Berkeley: University of California Press, 1978). On gravity artillery in Alfonso's Spain, see Paul E. Chevedden, "The Artillery of King James I the Conqueror," in *Iberia and the Mediterranean World of the Middle Ages: Studies in Honor of Robert I. Burns, S.J.*, ed. Larry Simon (vol. 1), Paul Chevedden, Donald Kagay, and Paul Padilla. 2 vols. (Leiden: E.J. Brill, 1995–96), 2: 47–94.

modern student of the *partidas* must envision them anew to appreciate the full meaning of these many business essays.

The king's fifteen titles or treatises, divided into 374 laws or essays, devote most of their space to purchase/sale, payment, pledge, contract, surety, and wage/rent. Very short titles, with only a fraction of the space given to those more serious topics, deal with the other nine subjects. Classified according to the number of pages taken up in the English translation by each topic, the round numbers show that buying/selling fills 27 pages, payment 21, pledge 20, contract 18, surety 15, wage/rent 13, partnership 7, maritime law 7, deposits, gifts, fairs, and debtors each 5 pages, loans 4, friendly usage loans 4, and exchange 2. Partial pages and an introductory page add an extra 8 pages, to a total of some 165 pages.

The content of the *partida* presents an economic world relatively familiar, a younger version of ourselves, an infant protocapitalism whose growth, mutations, and refinements would develop logically if by fits and starts down to modern times. Thus Alfonso's titles seem at first prosaic, familiar, promising few surprises whether to businessman or lawyer. But Alfonso's young business world was not yet ours; like any past, it was a different country than the present, with many different expedients and contexts. Alfonso doggedly takes us on a tour of its main features as seen by the legal mind.

MERCHANT LAW, MARITIME LAW

The treatise on "Merchants, Fairs, and Markets" deals with land commerce, local and international, operating mostly at markets. It takes only five pages, largely because customary merchant law and courts were adapted and sufficient to that world. Merchants are exhorted to use official measures, avoid adulteration and fraud, and "go by travelled roads" so as to pay the tolls and customs duties. Merchants and artisans must not conspire to set prices, or monopolies, or exclusivist unions, or to teach their trade only within the family. Conversely all merchants, including Christians, Jews, and Muslims, have the king's protection going to or coming from the network of markets. Toll takers must address merchants "in a civil manner"; they may require an oath from a suspected merchant but must not "search their persons or open their chests."

Similarly brief is the segment on maritime law, a specialty also well endowed with its own regulations and courts. The immemorial and international sea laws had some echoes in the Visigothic code, but for Castile this title 9 is "the first written code of maritime law," a rough outline to balance the section in the second *partida* on naval law.¹¹ It touches on the chartering, provisioning, navigating, defending, and manning of merchant ships, including the use of notaries on the voyage to adjust legal manifests of cargo. Captains and owners can arrest, detain, or even scourge a criminal sailor but must deliver him to a judge in port for real crimes. (Sea law elsewhere could provide

11. Jennifer L. Green, "The Development of Maritime Law in Medieval Spain: The Case of Castile and the *Siete Partidas*," *Historian* 58 (1996): 578. On ships, shipping, routes, piracy, and related items, see John H. Pryor, *Geography, Technology, and War: Studies in the Maritime History of the Mediterranean, 649–1571* (Cambridge: Cambridge University Press, 1988). See too Juan Antonio Arias Bonet, "Derecho marítimo en las *Partidas*," *Revista de derecho mercantil*, 41 (1966): 91–108; and Jesús Evaristo Casariego, *Historia del derecho y de las instituciones marítimas del mundo hispánico: estudios marítimos* (Madrid: J. Ruiz Alonso, 1947). For Castile see also José Martínez Gijón, "La jurisdicción marítima en Castilla durante la baja edad media," *Historia* (Universidad Católica de Chile) 8 (1969): 309–22. Cf. Craddock, *Legislative Works*, nos. C41 (Arias), C153 (Casariego), and C457 (Martínez).

for mutilation or death, but Alfonso forbids that.¹²) Appraisal of cargo and apportioning its loss in storm or shipwreck occupies three essays, flotsam and jetsam ashore another. An essay considers “fishermen and others” who position lights to wreck ships for their cargoes. Another deals with “predatory corsairs who infest the sea.” This treatise makes clear that special judges “are appointed in courts and other places along the seashore,” to decide informally and speedily, without a routine plaintiff’s charge (“without any libels”), anything within their competence, especially relying on the ship’s log. As Jennifer Green notes in her account of this essay, its vagueness and lack of detail “reveal the extent to which customary law was tacitly accepted” in maritime matters.¹³ In any event, Castile was only beginning a serious naval and maritime existence during Alfonso’s reign and was therefore particularly subject to the settled traditions of international sea commerce.

Maritime or “admiralty” courts then had already appeared in seaports around the Mediterranean. Compilations of their more or less commonly shared customs had been available since the eleventh century, beginning with the Amalfi customs of 1010 and exemplified at mid-thirteenth century by the Laws of Oléron for Atlantic France and the Black Book of the Admiralty for England. The most celebrated and influential of such courts and collections was the *Consolat de Mar* of Mediterranean Spain, with its international *Book of the Consulate of the Sea*. This was a network of magistrates, two in each tribunal, elected by local Catalan merchants in each place from among their own numbers. From 1266 the Barcelona merchants, by royal privilege, elected these summary judges. In the thirteenth century, Catalan consulates appeared at Alexandria, Algiers, Tunis, and several European ports. Barcelona received a consulate charter from James the Conqueror in 1258, and produced its own *Book of the Consulate* by 1282, closely followed by Valencia in 1283, both books apparently elaborated around a widespread *Costumes de la Mar*. A recent critical edition of the Catalan *Book* fills four volumes. An English translation, in 334 articles or ordinances, makes widely available that comprehensive picture of medieval maritime life in its most practical elements.¹⁴

PURCHASE/SALE, CONTRACTS

The longest treatise by far in this business *partida* is title 5 on purchase and sale, “one kind of contract of which men frequently make use” as “unavoidable.” This activity transcends merchant or professional life and affects the generality of people, as will various other titles such as loans, deposits, wages, and rents. Purchase and sale require 67 titles to unravel their complexities. Routine essays define the subject and discuss who can sell or buy, how this is done, what can and cannot be sold, the elements of price and fraud, the problems of deterioration or appreciation of the salable item, conditional sales, and the like. Compulsion or intimidation invalidates a purchase or sale: both parties must be free to act. A transaction may be oral, with

12. For a case of a privateer captain punishing a sailor by cutting off his ear and consequently being sued by the sailor, see Robert I. Burns, S.J., “Piracy as an Islamic-Christian Interface in the Thirteenth Century,” *Viator* 11 (1980): 165–78.

13. Green, “Maritime Law,” 587.

14. *Llibre del consolat de Mar*, ed. Germà Colon and Arcadi Garcia, 4 vols. (Barcelona: Fundació Noguera/Fundació Salvador Vives Casajuana, 1981–1987). *Consulate of the Sea and Related Documents* trans. Stanley S. Jados (University: University of Alabama Press, 1975). An earlier edition by Ferran Valls i Taberner, *Consolat de Mar*, 3 vols. (Barcelona: Editorial Barcino, 1930–1933) is in the Els Nostres Clàssics series, nos. A27, 37, 41. An old classic still useful is Antonio Capmany i de Montpalau, *Memorias históricas sobre la marina, comercio y artes de la antigua ciudad de Barcelona*, 3 vols. rev. (Barcelona: Cámara Oficial de Comercio y Navegación, [1779–92] 1961–63). See also Robert S. Smith, *The Spanish Guild Merchant: A History of the Consulado, 1250–1700* (Durham, N.C.: Duke University Press, 1940).

definite stages to completion, or it may involve a witnessed bill of sale, with price expressed. "No sale can be made without a price." An heir can pre-sell his "expectation" of a legacy, with precautions against encouraging the murder of the testator by the purchaser. No sacred or common place can be sold, such as roads or common springs or markets.

Weapons "of wood or iron," or provisions, cannot be sold to enemy Muslim powers. Real estate sales restrictions are laid out. Though a vendor may remove cupboards and other items "not fastened to the house," for example, he must leave the earthenware oil jars that are "sunk in the ground." The purchaser of a vineyard can expect to keep the supporting vine-stakes, but not the wine press or wine cellar or jars unless expressly mentioned. A sale of any kind "made for half the fair price" of the property as reckoned at that time "can be set aside." Vendors of property must disclose to purchasers any encumbrance connected with it or even any "weeds which were bad or injurious" to stock; this also applies to defects in horses and mules. Since slaves "naturally commit offenses against their masters," a slave may be deterred by the threat of selling him with the condition "that he never can be emancipated." The obligations of vendors here should also be placed in the context of the third *partida* on property.¹⁵

Another extensive treatise in the fifth *partida* should be viewed along with the third *partida*: the discussion of contracts here, as against the many exemplar contracts reproduced in the third, so that theory may be aligned with practice. Contracts are viewed as mutual promises, valid even "where one speaks Latin and the other Arabic," requiring words instead of signs in simple clarity. Anyone can make such a contract except the insane, an "infant" under seven, a ward under fourteen, and wastrels. Third parties can sometimes promise for another, but often cannot. The categories of promises, their time limits, conditional promises, the kinds of properties able to be promised, and invalid promises come under discussion. Alfonso considers the case of a master promising his slave to another but then "finding him [the slave] with his wife or daughter" and therefore "lawfully" killing him; the master is then free of his promise.

No Christian can promise to give a Christian slave to a Moor, Jew, or pagan; but a promise by a Jew or Moor to give a Christian slave to a Christian is binding. Conditions invalidating a promise, and penalties for breaking a promise, each receive several essays. Invalid promises include an arranged marriage by third parties, as for persons not of age; only if the principals voluntarily accede when mature can such a promise be redeemed, "because marriage should not be entered into through fear of punishment but through love and with the consent of both parties."

USURY VERSUS INTEREST

No treatment of contracts could omit considering usury, so Alfonso gives it two essays, using the example of a man who lends twenty maravedís on the promise of getting back "thirty or forty for their use." Few aspects of the medieval economy are so much misunderstood as usury. Christians, Muslims, and Jews condemned it, each in their own perspective; early Christianity and Byzantium alike rejected it, and medieval clergy and councils inveighed against it. As Berman notes, however, "the defini-

15. See now José Arias Ramos and Juan Antonio Arias Bonet, "La compra-venta en las *Partidas*: un estudio sobre los precedentes del título 5 de la quinta *Partida*," in *Centenario de la ley del notariado: estudios históricos*, 2 vols. (Madrid: Junta de Decanos de los Colegios Notariales de España, 1964–65), 2: 339–43. On down payments see Alfonso Otero Varela, "Las arras en el derecho español medieval," *Anuario de historia del derecho español* 25 (1955): 198–210. Cf. comments of Craddock, *Legislative Works*, nos. C51 (Arias) and C513 (Otero).

tion of usury was never quite clear and it kept changing." As Europe plunged into the credit world of the twelfth and thirteenth centuries, emerging from primitive semi-rural economies, the nature of money and loans changed, the academic canonists "began to systematize for the first time the law of usury," and secular codes spelled a praxis of interest in the real world. Canonists designated a growing number of non-usurious credit devices; they described categories of situations where extra profit was legitimate; and the thirteenth-century canonist Az(z)o of Bologna (d. after 1230?) even invented the word "interest" (*interesse*) to indicate a lawful profit on a loan. Simultaneously the canonical courts developed a general attitude in usury cases. In a study of officially initiated prosecutions for usury in later medieval England, R. H. Helmholz reports that the church courts "prosecuted only public lenders, lenders who had entered into relatively small transactions and at relatively large rates of interest," and that "only substantial rates of interest were punished as usurious."¹⁶

Codes such as the *Furs* of Valencia meanwhile regulated interest rates instead of forbidding them, at a generous level which suggests that the market value of a money at a given time controlled the rate. Muslims and Jews as outside the canon law system were allowed a very high interest, but this would only have relegated such lenders to emergency, high-risk, petty, or short-term pickings, from locals rather than investors or serious merchants. The old Visigothic code had allowed a 12½ percent interest in most cases; Justinian's code for the Christian empire allowed 4 to 12 percent, depending on occupation and rank. Alfonso's example of usury as lending twenty maravedís for an interest sum of ten or twenty maravedís beyond the principal would have involved an unrealistic rate of 50 and 100 percent.

Besides the disguises by which interest transactions passed daily unheeded, the exceptions by which commercial transactions moved into the nonusurious column kept the credit system flexible and adequate to commercial needs. Indeed, "the canon law of usury developed as a system of exceptions to the prohibition," becoming eventually a regulation of greed and unfair practices. The ongoing debate, however, would continue into modern times as the modifying circumstances of profit and interest kept changing. As for contracts in general, "the canonists were able, with the help of Romanist legal science, to create a subsystem of contract law within the system of canon law as a whole."¹⁷

PERSPECTIVES

Each of Alfonso's other titles or treatises merits close reading, not least for glimpses of social or commercial life in his day. Title 8 offers some examples. Salaries paid to teachers and to artisans with apprentices must be earned by "faithful" teaching and "moderate" punishment of the youngsters (essay 11). Such teachers were for lower schools, of course, not the exalted university professors of the second *partida* who received a sacral stipend according to the canonists' maxim that "scholarship is a gift of God and therefore cannot be sold." Inept jewelers who crack a precious stone while cutting it, due to insufficient training, must pay its value as appraised by specialists. This "applies also to other master-workmen, such as physicians, surgeons, [and] farriers" (essay 10). Negligent breakage in transporting for example "leather bottles"

16. Berman, *Law and Revolution*, 248–49, R. H. Helmholz, "Usury and the Medieval English Church Courts," *Speculum* 61 (1986): 364–80.

17. Berman, *Law and Revolution*, 249–50. On usury see also Helmholz; John T. Gilchrist, *The Church and Economic Activity in the Middle Ages* (New York: Macmillan, 1969); John T. Noonan, *The Scholastic Analysis of Usury* (Cambridge, Mass.: Harvard University Press, 1957).

or “marble pillars,” must be recompensed. Negligent contractors who undertake to build “a castle, tower,” or other edifice are to be similarly judged by their peers, though “heavy rains, floods, or earthquakes” may turn out to be the cause of collapse (essay 16). If a tenant improves his house or property, the landlord should reward him (essay 24). Travelers who lodge in inns or taverns, or aboard ship, can demand the price of their lost or diminished luggage, if the innkeepers or captains are “very dishonest” and “criminal” or even negligent. In some cases a private host entertaining another person can be liable (essay 26). All such landlords must particularly care for pilgrims on God’s business, and not overcharge or “haggle with them in any way whatever” (essay 27).

A fascinating mini-institution widely used in medieval Spain appears in title or treatise 3, though briefly. This is the “deposit” of property, accepted for safekeeping without any recompense in order to “give pleasure and display affection” for the depositor. Usually the depositor was in trouble, rendered homeless by a fire, for example, or forced to leave town. Religious orders commonly accepted deposits; the Templars at Gardeny in Catalonia had a warehouse for them; but the Mercedarians wrote into their rule a prohibition against such responsibilities. Christians, Jews, and Moors had recourse to this service, as did every class of society. The king kept valuable charters in monastery deposit, and litigants would leave disputed objects or wealth until the courts could decide. Although valuables and important charters may have been the most common deposits, usage also included Muslim captives, a mule, a key, a crown, a shield, a dowry, and at Morella in 1308 a corpse.¹⁸ Alfonso merely outlines this service institution, explains the levels of responsibility involved, insists on the refusal of compensation, and recommends a charter or receipt at the time of deposit.

Each of the treatises comprising the fifth *partida* points down such little-traveled roads for the scholar to investigate further and for the *lecteur moyen* to ponder and enjoy in themselves.

SUGGESTIONS FOR READING

This list combines materials from the footnotes with some general works on medieval commerce, especially those in English, that may illuminate or give background to Alfonso’s *partida* on business matters.

- Abulafia, David. “Catalan Merchants and the Western Mediterranean, 1236–1600: Studies in the Notarial Acts of Barcelona and Sicily.” *Viator* 16 (1985): 209–42.
- . *A Mediterranean Emporium: The Catalan Kingdom of Majorca*. Cambridge: Cambridge University Press, 1994.
- Abu-Lughod, Janet L. *Before European Hegemony: The World System, A.D. 1250–1350*. Oxford: Oxford University Press, 1989.
- . *The World System in the Thirteenth Century: Dead-End or Precursor?* Washington, D.C.: American Historical Association, 1995.
- Arias Bonet, Juan Antonio. “El depósito en las *Partidas*.” *Anuario de historia del derecho español* 32 (1962): 543–66.
- . “Derecho marítimo en las *Partidas*.” *Revista de derecho mercantil* 41 (1966): 91–108.
- . “Estipulaciones en favor de tercero en los glosadores y en las *Partidas*.” *Anuario de historia del derecho español* 34 (1964): 235–48.

18. Robert I. Burns, S.J., “Religious Houses as Archives/Depositories: A ‘Letter of Credence’ from the Majorcan to the Barcelonan Templars (1244),” *Estudis castellanones* 6 (1994–95): 235–42; Juan Antonio Arias Bonet, “El depósito en las *Partidas*,” *Anuario de historia del derecho español* 32 (1962): 543–66; José Martínez Gijón, “La comenda en el derecho español: la comenda-depósito,” *Anuario de historia del derecho español* 34 (1964): 31–140. Cf. Craddock’s comments in *Legislative Works*, nos. C40 (Arias) and C455 (Martínez).

- . "Recepción de fórmulas estipulatorias en la baja edad media: un estudio sobre las *promisiones* de las *Siete partidas*." *Boletim de facultade de direito da Universidade de Coimbra* 42 (1967): 285–334.
- Arias Ramos, José and Juan Antonio Arias Bonet. "La compra-venta en las *Partidas*: un estudio sobre los precedentes del título 5 de la quinta *Partida*." In *Centenario de la ley del notariado*, part 1, *Estudios históricos*. 2 vols. Madrid: Junta de Decanos de los Colegios Notariales de España, 1964–65. 2: 339–443.
- Bensch, Stephen P. *Barcelona and Its Rulers, 1096–1291*. Cambridge: Cambridge University Press, 1995.
- Berman, Harold J. *Law and Revolution: The Formation of the Western Legal Tradition*. Cambridge, Mass.: Harvard University Press, 1983.
- Burns, Robert I., S.J. *Medieval Colonialism: Postcrusade Exploitation of Islamic Valencia*. Princeton, N.J.: Princeton University Press, 1975.
- . "Piracy as an Islamic-Christian Interface in the Thirteenth Century." *Viator* 11 (1980): 165–78.
- . "Religious Houses as Archives/Depositories: A 'Letter of Credence' from the Majorcan to the Barcelonan Templars (1244)." *Estudis castellonencs* 6 (1994–95): 235–42.
- Byrne, Eugene H. *Genoese Shipping in the Twelfth and Thirteenth Centuries*. Cambridge, Mass.: Medieval Academy of America, [1930] 1970.
- Capmany i de Montpalau, Antonio. *Memorias históricas sobre la marina, comercio y artes de la antigua ciudad de Barcelona*. 3 vols. Revised. Barcelona: Cámara Oficial de Comercio y Navegación, [1779–92] 1961–63.
- Carrasco Cantos, Inés. *Estudio del léxico institucional de la Partida V*. Málaga: Universidad de Málaga, 1981.
- Casariago, Jesús Evaristo. *Estudios marítimos*. In his *Historia del derecho y de las instituciones marítimas del mundo hispánico*. Madrid: J. Ruiz Alonso, 1947.
- Chevedden, Paul E. "The Artillery of King James I the Conqueror." In *Iberia and the Mediterranean World of the Middle Ages: Studies in Honor of Robert I. Burns, S.J.*, ed. Larry Simon (vol. 1), Paul E. Chevedden, Donald Kagay, and Paul Padilla. 2 vols. Leiden/New York: E.J. Brill, 1995–96. 2: 47–94.
- Cipolla, Carlo M. *Before the Industrial Revolution: European Society and Economy, 1000–1700*. 3rd ed. London: Routledge, 1993.
- Consolat de Mar*. Ed. Ferran Valls i Taberner. 3 vols. Els Nostres Clàssics A27, 37, 41. Barcelona: Editorial Barcino, 1930–33. See also *Llibre*.
- Constable, Olivia Remie. *Trade and Traders in Muslim Spain: The Commercial Realignment of the Iberian Peninsula, 900–1500*. Cambridge: Cambridge University Press, 1994.
- Consulate of the Sea and Related Documents*. Trans. Stanley S. Jados. University: University of Alabama Press, 1975.
- Craddock, Jerry R. *The Legislative Works of Alfonso X, el Sabio*. Research Bibliographies and Checklists 45. London: Grant and Cutler, 1986.
- Curtin, Philip D. *Cross-Cultural Trade in World History*. Cambridge: Cambridge University Press, 1984.
- The Dawn of Modern Banking*. Center for Medieval and Renaissance Studies, University of California at Los Angeles. New Haven, Conn.: Yale University Press, 1979.
- Dufourcq, Charles E. *L'Espagne catalane et le Maghrib au XIII^e et XIV^e siècles: de la bataille de Las Navas de Tolosa (1212) à l'avènement du sultan mérinide Aboul-Hassan (1331)*. Paris: Presses Universitaires de France, 1966.
- English, Edward D. *Enterprise and Liability in Sienese Banking, 1230–1350*. Cambridge, Mass.: Medieval Academy of America, 1988.
- Fernández-Armesto, Felipe. *Before Columbus: Exploration and Colonization from the Mediterranean to the Atlantic, 1229–1492*. Philadelphia: University of Pennsylvania Press, 1987.
- Gacto Fernández, Enrique. *Historia de la jurisdicción mercantil en España*. Seville: Universidad de Sevilla, 1971.
- García Garrido, Manuel Jesús. "El comodato en las *Partidas*." In *Estudios jurídicos: homenaje al profesor Alfonso Otero*. Santiago de Compostela: Universidad de Santiago de Compostela., 1981. 85–101.
- García i Sanz, Arcadi. "La banca en los siglos XIII y XIV según el 'Aureum opus.'" *Boletín de la Sociedad castellanense de cultura* 33 (1957): 201–5.
- García i Sanz, Arcadi and Núria Coll i Julià. *Galeres mercants catalanes dels segles XIV i XV*. Barcelona: Fundació Noguera, 1994.
- García i Sanz, Arcadi and Maria Teresa Ferrer i Mallol. *Assegurances i canvis marítims medievals a Barcelona*. 2 vols. Barcelona: Institut d'Estudis Catalans, 1983.
- García i Sanz, Arcadi and Josep M. Madurell i Marimon. *Societats mercantils medievals a Barcelona*. 2 vols. Barcelona: Fundació Noguera, 1986.
- Gilchrist, John T. *The Church and Economic Activity in the Middle Ages*. New York: Macmillan, 1969.
- Green, Jennifer L. "The Development of Maritime Law in Medieval Spain: The Case of Castile and the *Siete Partidas*." *Historian* 58 (1996): 575–87.

- Helmholz, R. H. "Usury and the Medieval English Church Courts." *Speculum* 41 (1986): 364–80.
- Hunt, Edwin S. and James M. Murray. *A History of Business in Medieval Europe, 1250–1550*. Cambridge: Cambridge University Press, 1999.
- Iglesia Ferreirós, Aquilino. "Costums de Mar." In *El dret comú i Catalunya*. Actes del V Simposi Internacional del Dret Comú i Catalunya. Barcelona: Fundació Noguera, 1996. 242–602.
- Khalilieh, Hassan S. *Islamic Maritime Law: An Introduction*. Leiden: E.J. Brill, 1998.
- Lewis, Archibald R. *Nomads and Crusaders, A.D. 1000–1368*. Bloomington: Indiana University Press, 1988.
- Llibre del Consolat de Mar*. Ed. Germà Colon and Arcadi Garcia. 4 vols. Barcelona: Fundació Noguera/ Fundació Salvador Vives Casajuana, 1981–87. See also *Consolat* and *Consulate*.
- Lopez, Robert S. *The Commercial Revolution of the Middle Ages, 950–1350*. Cambridge: Cambridge University Press, 1977.
- Lopez, Robert S. and Irving W. Raymond, eds. *Medieval Trade in the Mediterranean World: Illustrative Documents*. New York: Columbia University Press, [1955] 1968.
- López Pérez, María Dolores. *La corona de Aragón y el Magreb en el siglo XIV (1331–1410)*. Barcelona : Consejo Superior de Investigaciones Científicas, 1995.
- Martínez Gijón, José. "La comenda en el derecho español: la comenda-depósito." *Anuario de historia del derecho español* 34 (1964): 31–140.
- . "La jurisdicción marítima en Castilla durante la baja edad media." *Historia* (Universidad Católica de Chile) 8 (1969): 309–22.
- Noonan, John T. *The Scholastic Analysis of Usury*. Cambridge, Mass.: Harvard University Press, 1957.
- Otero Varela, Alfonso. "Las arras en el derecho español medieval." *Anuario de historia del derecho español* 25 (1955): 198–210.
- Pryor, John H. *Commerce, Shipping and Naval Warfare in the Medieval Mediterranean*. Brookfield, Vt.: Ashgate, 1987.
- . *Geography, Technology, and War: Studies in the Maritime History of the Mediterranean 649–1571*. Cambridge: Cambridge University Press, 1988.
- Relaciones de la península ibérica con el Magreb, siglos XIII–XVI: actas del coloquio*. Ed. Mercedes García-Arenal and María J. Viguera. Madrid: Consejo Superior de Investigaciones Científicas, 1988.
- Riu, Manuel. "Deposit Banking in Barcelona, 1300–1700." *Journal of Economic and Business History* 4 (1931): 121–55.
- Ruiz, Teófilo F. "Castilian Merchants in England, 1248–1250." In *Order and Innovation in the Middle Ages: Essays in Honor of Joseph R. Strayer*, ed. William C. Jordan, Bruce McNab, and Teófilo F. Ruiz. Princeton, N.J.: Princeton University Press, 1976. 173–85.
- . *Crisis and Continuity: Land and Town in Late Medieval Castile*. Philadelphia: University of Pennsylvania Press, 1994.
- Sayous, André Edouard. *Els mètodes comercials a la Barcelona medieval*. Barcelona: Editorial Base, 1975.
- Smith, Robert S. *The Spanish Guild Merchant: A History of the Consulado, 1250–1700*. Durham, N.C.: Duke University Press, 1940.
- Tomás y Valiente, Francisco. "La prisión por deudas en los derechos castellano y aragonés." *Anuario de historia del derecho español* 30 (1960): 249–489.
- Usher, Abbot P. *The Early History of Deposit Banking in Mediterranean Europe*. Cambridge, Mass.: Harvard University Press, 1943.
- White, Lynn, Jr. *Medieval Religion and Technology: Collected Essays*. Berkeley: University of California Press, 1978.

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HERE BEGINS
THE FOURTH PARTIDA

WHICH TREATS OF BETROTHALS AND MARRIAGES

Our Lord conferred signal honors upon man above all other creatures which He made. First in fashioning him in His own form and image, as He Himself said before He created him, and in endowing him with understanding to know Him and all other things, and to learn how to distinguish the different kinds of said creatures, each of them as it seems proper. Moreover, He honored man greatly by giving him all creatures which He made for his service. And in addition to all this, He showed him especially great distinction by creating a woman whom He gave him as a companion and by whom he might have descendants; and He established them both in Paradise in marriage, and promulgated it as a law between them, that while their bodies were different according to nature, they should be one, so far as love was concerned, so that they could not be divided, preserving faithfulness to one another; and, besides, that from this affection offspring might be born, by which the world might be peopled, and He Himself praised and served.

Wherefore, since God Himself by Himself, established this regulation of matrimony, it is one of the noblest and most honorable of the seven Sacraments of the Holy Church, and for this reason it should be honored and observed, as being the first of them, and because it was made and ordained by God Himself, in Paradise, which is, as it were, his own particular house; and, also, as it is the support of the world, and causes men naturally to live a regular life and one free from sin, and without which the other six Sacraments can neither be maintained nor observed. For this reason we have placed it in the middle of the Seven Partidas of this book, just as the heart is placed in the middle of the body where is situated the spirit of man, from whence life proceeds to all his members; and also as the sun, which illumines all things and is placed in the middle of the seven heavens, where are the seven stars called planets; hence, we have inserted the Partida treating of marriage in the middle of the other Six Partidas of this book. For similar reasons we have also arranged the First Partida, which treats of all matters relating to the Catholic faith that enables man to know God through belief, as well as the law of our Lord Jesus Christ, which is the Spiritual Sword, that cuts to pieces concealed sins. And, in like manner the Second, which treats of great lords, and is the temporal sword which powerfully cuts to pieces public and prohibited offenses. And, in like manner the Third, which explains justice that is given to men for judgment, to establish love and peace among them. And also the Fifth, which treats of all business which men transact with one another, with the consent of both parties, from which controversies subsequently arise which must be determined by law. And, in like manner, the Sixth, which treats of inheritances, which men obtain by descent, or through bequests by will. And, likewise, the Seventh, which shows how all crimes which men commit voluntarily on the one hand, or involuntarily on the other should be punished, for none of these things can be lawfully accomplished except by means of offspring, resulting from marriage brought about by the union of man and woman; therefore we have placed it in the Fourth Partida of this book, that is in the middle of the seven, just as Our Lord placed the sun in the fourth heaven which lights all the stars, as related in His law.

Wherefore, since in the Third Partida of this book we have spoken of justice which is dispensed regularly by means of prudence and learning, enabling men to live in peace, and giving each one of them his rights through legal compul-

sion, we now intend to speak in this Fourth Partida, of the justice which should be maintained and observed in marriage which joins persons together, by mutual consent. And we shall explain betrothals and marriages; the conditions imposed by men with regard to them; and the impediments which arise by reason of relationship, affinity, compaternity, or affiliation, or in any other manner whatsoever. We shall also speak of accusations; of the distinctions in marriage; of earnest, gifts, and dowries, and the donations which men make by reason of them; of legitimate children, and of other kinds of whatsoever nature they may be, and of the authority which parents have over them; and of the obligations existing between persons who are reared and those who rear them, and between slaves and their masters, and between lords and their vassals; and, above all, we shall explain the obligations existing between men by nature or through friendship.

TITLE I.

Concerning Betrothals.

A betrothal is the first agreement which persons are accustomed to enter into with one another, on account of marriage. For this reason, since in the beginning of this Partida we mentioned betrothals, we intend to explain them in this Title and show what a betrothal is; whence it derived its name; how many kinds there are; how they should be made; how old those who betroth themselves to one another should be; who has authority to compel betrothed persons to be married; in what way this compulsion should be exercised; for what reasons betrothals can be annulled; and what affinity arises from them which is an impediment to marriage.

LAW I.

What a Betrothal Is, and Whence It Derives Its Name.

A betrothal is a promise which persons make orally when they desire to marry. It derives this name from a word called, in Latin, *spondeo*, which means in Castilian, to promise; and this is so for the reason that the ancients established the custom that each man should promise the woman with whom he desired to be united, that he would marry her. A promise, like this one of a betrothal, can also be made where the betrothed persons are not present, just as well as if they were, where the party who dispatched the messenger or agent, does not change his mind before the one to whom he has sent the message has given consent. This takes place principally in betrothals and marriages, but in other agreements, based upon a promise which one man gives in behalf of another—and which is called, in Latin, *stipulatio*—where the party is not present, a promise made under such circumstances will not be valid. For, ordinarily, no man can bind another by his promise, in the manner above stated, when he is not present, except with regard to such persons as the law prescribes.

LAW II.

How Many Kinds of Betrothals There Are, and How They Should Be Contracted.

Betrothals are made in two ways, first orally, relating to the future; second orally, with reference to the present time. That which relates to the future, can be contracted by five methods. First, where a man says to a woman: "I promise to take you as my wife," and she says: "I will accept you for my husband." Second, when he says: "I make an agreement with you to marry you;" and the woman says the same thing to him. Third, when they swear that they will marry one another, and each of them says: "I swear upon these Gospels (or upon this cross, or upon anything else) that I will marry you." Fourth, when he gives anything to the woman, speaking as follows: "I give you this as a pledge and I promise to marry you." Fifth, when he puts a ring on her finger, saying: "I give you this ring as a token that I will marry you." The second of the two ways mentioned in the beginning of this law, that is orally, and relating to the present time, is as follows; for instance where the man says: "I take you for my wife;" and she replies: "I take you for my husband;" or other words similar to these, as where the man says: "I agree to accept you as my wife, and I promise that, hereafter, I will consider you my wife, and will be true to you;" and she answers in the same way. This last way is rather a marriage than a betrothal, although men are accustomed to call it the latter.

LAW III.

Concerning Betrothals Which Are Made Orally and Relating to the Present Time, and for What Reasons They Are Betrothals and Not Marriages.

Men, in their betrothals, utter words referring to the present time which, although they resemble marriages, are only betrothals. This is the case where the man says: "I will take you for my wife, if my father is content;" and this is also the case, where the woman says the same to the man. This is a betrothal, and not a marriage, because when anyone makes his marriage dependent upon the will of another person, the agreement he makes will not be valid unless the other party consents. The case is the same when the betrothal is subject to any condition and the marriage will not take place unless this is complied with; also when it happens that the parties are not of full age to be married, are seven years old or upwards, and betroth themselves by words relating to the present time, as stated in the preceding law; this would not be a marriage but a betrothal. For, in a case of this kind, the force of the words is not to be considered so much as what the law orders to be observed. If, however, such parties as these remain of the same mind until they have attained their majority, neither of them manifesting any opposition, this would be not merely a betrothal but a marriage, whether they publicly consent, or keep silent. Consent is understood by their silence when they live together; or receive gifts from one another; or have the habit of visiting one another in their houses; or where the man cohabits with the woman.¹

LAW IV.

A Marriage Contracted by Words Relating to the Present Time Is Valid, Just as That Made by the Union of Husband and Wife, and What Difference There Is Between Them.

There is no difference or distinction, so far as the validity of a marriage is concerned, between one contracted by words relating to the present time, and the other which is consummated by the husband having carnal union with his wife. This is the case because consent alone, made by words relating to the present time, is sufficient to render the marriage valid. However, one of these is consummated by word and deed, and the other by word alone. Although a marriage may be valid which is contracted in either of the ways above mentioned, nevertheless, there is a distinction between them in three respects. First, where a virgin is betrothed to a man by words relating to the present time, and he dies before he has carnal union with her, and afterwards she marries someone else; although this would be a legal marriage on both sides, the last person who married her would not be, for that reason, a bigamist, which means a man who has two wives. But if the first one had known her carnally, as above mentioned, the other, who afterwards married her would be a bigamist. And although the latter had not had two wives, he would be a bigamist for the following reason, namely: because she whom he married in this way was not a virgin; for in order for a man not to be a bigamist it is necessary that he should not have had another wife whom he

¹ Under the civil law, a child being *alieni juris*, and subject to the absolute control of its father, unless previously emancipated, the consent of the parent was, of course, necessary in all betrothals and marriages. Even a woman who was *sui juris* was compelled to obtain the permission of whoever had charge of her affairs for the reason that the change in her condition must naturally affect the interests of members of her family. This rule requiring the consent of some one endowed with paternal authority was adopted in the *Forum Judicum*. (III-I-8.) The law of the Twelve Tables regarded woman simply as a chattel, and her ownership at different periods was regulated first by forcible seizure; second, by purchase; third, by acquisition through prescription, as of any other species of personal property, the subsequent *usus* of the Roman Law. All of these relate to marriage, for in those primitive times the ceremony of betrothal had no place.—Ed.

had married and known carnally, and moreover that the woman should not have had another husband, and that she should be a virgin.

Second, on account of the affinity created by marriages which have been consummated, but not by others, between the husband and the relatives of his wife, and between the wife and the relatives of her husband. For an impediment arises from such an affinity, on account of which the husband cannot afterwards marry any of the female relatives of his wife within the fourth degree; nor, on the other hand, can she marry any of the relatives of her husband within the same degree, and, if they do marry, such a marriage should be annulled. But with regard to the other marriage contracted by words relating to the present time, or in any of the other ways mentioned in the preceding law, although no impediment arises through affinity, there is another obstacle to prevent their matrimonial union as above stated in this law. This obstacle is called, in Latin, *publicae honestatis justitia*, which means a law which should be observed for the honor of the church and the people. Wherefore, a marriage of this kind offers an impediment to the union of either of the parties with the relatives of the other, just as a marriage which has been consummated, as above stated.

The third instance in which there is a distinction in marriages is, as follows, namely; where either of those married by words relating to the present time desires to enter a religious order he or she can do so, although the other party may oppose it, but where the marriage has been consummated, one cannot do this without the consent of the other.

LAW V.

Matrimony Has Three Sacraments.

The marriage contracted by words relating to the present time, and the other made orally and consummated, as stated in the preceding law, are both valid, and each includes the meaning of three Sacraments. First, when contracted by words relating to the present time; for by means of it the Holy Church understands that the soul of the faithful Christian is united to God by love and attachment, just as the wishes of those who marry are united, by agreeing with one another. With reference to this the Apostle St. Paul said, that he who unites himself with God is of the same spirit with Him. The second Sacrament is the other marriage which is contracted by word and by deed, and is called consummated. By this is understood the union of the person of the Son of God with the nature of man, by being born of the Holy Virgin Mary. And with respect to this the Apostle St. John said, that the word of God became flesh by assuming the form of man. The third Sacrament exists in this same consummated marriage; for if he who marries a virgin always observes the marriage by not marrying any other woman, they are both, as it were, one flesh. Moreover, by a marriage like this, the unity of the Church is understood, for the reason that it is made up of all the people in the world, and united to our Lord Jesus Christ; and just as a marriage observed in this manner always remains a union and is never severed, so, in like manner, the Church is never separated from Jesus Christ, or He from it, after they have been united.

LAW VI.

Of What Age Betrothed Persons Should Be.

Males and females can be betrothed after they are seven years of age, because then they begin to possess intelligence, and are old enough to be content with a betrothal; and if any persons are betrothed before they arrive at this age, or their relatives contract such a betrothal in their names, one or both of them being under seven years of age, none of their acts will be valid; except where

they have passed this age, and are content with what they have done, and agree to it, for in this case the betrothal will be valid. Moreover, the impediment arising from a betrothal of this kind is of such a character that, if either of them should, during life, separate from the other, or should die, neither of them can marry any of the relatives of the other party as stated in the second law preceding this one. In order for a marriage to be contracted, the male must be fourteen years of age and the female twelve, and where any persons are married before that time, it will not be a marriage, but a betrothal, except when they are so near it that they are already fitted for carnal union; for the knowledge and the ability for the performance of this make up for the deficiency of age.

LAW VII.

Who Has Power to Compel Betrothed Persons to Be Married and in What Way This Compulsion Should Be Exercised.

Bishops, or those who occupy their places, can compel betrothed persons to complete their marriage. This would be the case when one of the said persons desires to avoid the marriage, and the other wishes to carry it out, for, in this case, the one who desires to escape from concluding it should be subjected to compulsion. For those who promise to marry one another are bound to do so except where one of the parties offers some lawful excuse, which must be valid; and where he has no such excuse, he can be forced to conclude the marriage by the decree of the Holy Church. Either one of said parties who acts contrary to this regulation and is not willing to contract the marriage, and is betrothed again, should be compelled to return and carry out the first betrothal. This rule is understood to apply to those who are of age when they are betrothed, and compulsion should be applied by a decree of the Holy Church.¹

LAW VIII.

For How Many Reasons Betrothals Can Be Hindered, or Annulled, So as Not to Be Carried Out.

Betrothals can be opposed and prevented, so as not to be carried out, for nine reasons. First, where one of the betrothed parties enters a religious order, which either of them has a right to do even though the other may oppose it. It is understood that this can be done before carnal union takes place; and the one who does not enter the order can ask that permission be given him to marry, and this should be granted. Second, where one of the parties goes to some other country and cannot be found, or his whereabouts ascertained. In a case of this kind the other ought to wait for three years, and if the absent person should not return by that time the other can ask permission to marry and it should be given. However, the said party should do penance for the oath and the promise which he or she made to marry the other, if it was his or her fault that the mar-

¹ This rule still prevails among those nations whose jurisprudence is based upon the civil law. No legal obligation is incurred by a mere promise to marry, or even by a betrothal entered into under the most solemn engagements and completed in compliance with all the requisite formalities through which an action for damages under our system would lie against the party who violates the contract. This is due to the fact that marriage being regarded as a sacrament of the Catholic church, exclusive jurisdiction of such matters is claimed by, and conceded to ecclesiastical tribunals, a principle whose application in former times, during sacerdotal supremacy, was of far more significance than it is at present. An additional reason is given by the Spanish law which is that as marriage is a contract of supreme and transcendental importance, the free will of the parties should, above all, be considered. The one who violates his or her engagement is, however, bound to reimburse the other for all expenses he or she may have incurred in consequence, and which have been productive of no advantage to the aggrieved party. The claim for such expenses is barred if not presented within twelve months. (Cod. Civ. de Esp. IV-2 Art. 66.) (Cod. Civ. d' Ital. V-I-Art. 54.) The Roman law was equally indulgent: (Corp. Jur. Civ. Cod. V-I-1). In Spain a betrothal can be made at seven years, which is also the age authorized by the canon law, but the consent of parents must be asked by a son after he has attained his majority, even though he be a widower, and has been emancipated from paternal control. The Italian Law requires the consent of the parents where the son is less than twenty-five years old, and the daughter less than twenty-one.—Ed.

riage was not concluded. Third, where either of the parties is a leper or deformed, or becomes blind, or loses his nose, or any other more serious accident happens to him than those above named. Fourth, where, before they are united, some affinity arises between them, so that one of them becomes carnally joined to a relative of the other. Fifth, where the betrothed parties disagree, and both of them consent to separate. Sixth, where either of them commits fornication, on account of which the marriage relation can be severed; for if a man can leave his wife when she commits adultery, much more is he justified in not receiving her to whom he is betrothed when she is guilty of such an offense. The seventh reason is, where one is betrothed by words relating to future time, and, after this, either of them is betrothed to some other person by words relating to the present time; for, in this instance, the first betrothal is annulled, and the second becomes valid. The case would be the same where a man was betrothed to a woman by words relating to future time, and afterwards was betrothed to another in the same way, for if he had any thing to do with her to whom he was last betrothed, the first betrothal will be annulled, and the second will be valid. This rule prevails in order that the marriage may afterwards have more force and be more binding than the betrothal made in the first place. Nevertheless, which ever one is guilty must perform penance for the offence which he or she committed, in failing to do what they promised at the first betrothal. But where persons betroth themselves simply, without any oath, by words relating to future time, and, after this, one of them is betrothed in the same manner to another, and swears to carry out the betrothal; although some persons are of the opinion that the second betrothal should prevail on account of the oath which was taken with regard to it, rather than the first, this is not the case; for when it is made in this way the first one and not the second should be valid, and the party can be compelled to carry it out, because the oath which a man makes unlawfully does not bind him so that he may be required to keep it. However, the party who does this should perform penance for the perjury that he committed, on account of the oath which he took at the second betrothal and could not keep, for the reason that he was required to comply with the first. The eighth reason for which a betrothal may be annulled, is where parties carry off any one's betrothed and lie with her, for then the party is not bound to marry her, if he does not desire to. The ninth reason is, where persons are betrothed before they have arrived at the lawful age; for when either of them is under said age and afterwards attains it, and does not desire to contract the marriage, he or she can then ask permission to marry someone else, and this should be granted, and the betrothal made in this way should be annulled. But if, when they are betrothed, one is of lawful age and the other is not, the older should wait until the younger is old enough. If the younger party desires to agree to the marriage, after he or she has attained the lawful age, the other party ought to be compelled to consummate the marriage, because he gave his consent, being of lawful age; except where the said older party has betrothed himself to someone else by words relating to the present time, or has entered a religious order.

As to two of these nine reasons for which betrothals are annulled, one of which is when one of the parties enters a religious order, the other when either of them marries by words relating to the present or future time and carnal union takes place, as stated in the preceding law; in neither of these instances is there necessity for asking permission to annul the betrothal, and this is the case, because it is annulled solely by the act alone. But under all other circumstances a betrothal should be annulled by a decree of the Holy Church.

LAW IX.**Which Betrothal Should Prevail Where Two Men Are Betrothed to One Woman, or One Man to Two Women.**

Where two men are betrothed to one woman, the first one by words relating to future time, and the other by words relating to the present time, the betrothal made by words relating to the present time will be valid, and not the other, although the latter may have been confirmed by an oath; the party is bound, however, to do penance for his promise and the oath which he took, for the reason that he did not keep them. The same rule will apply where one man is betrothed in this way to two women, except where he had carnal union with the first one to whom he was betrothed by words relating to the future time, before he was betrothed to the other by words relating to the present time, the first marriage, and not the second, will be valid, even though he had intercourse with her to whom he betrothed himself last by words relating to the present time.

Moreover, if anyone betroths himself to two women at once, by words relating to the future time, stating that he promises that he will marry one of them, he has the choice to marry whichever one he selects, except where he has known one of them carnally, and afterwards desires to marry the other; or betroths himself to the other by words relating to the present time, before he lay with the other to whom he was betrothed by words relating to future time.

LAW X.**Parents Cannot Betroth Their Daughters When They Are Not Present, or Do Not Give Their Consent.**

Where one man promises another to take one of his daughters as his wife, such words do not constitute a betrothal, because none of the daughters was present, and does not specifically consent to take the party as her husband, any more than he does her as his wife, for just as matrimony cannot be contracted by one person alone, neither can a betrothal be so contracted. In matrimony it is necessary for those who desire to contract it to be present and each one must accept the other, or there must be two others who do this by their direction, and if a father swears or promises a party who has sworn to him that he would take that one of his daughters which he would give him as his wife, and afterwards none of his daughters gives her consent, or is willing to accept the party to whom the father had sworn, he cannot, for this reason, compel any of them absolutely to do this, although he has a right to reprove them, in order to obtain their permission. If, however, the party to whom the father wishes to marry one of his daughters was a desirable person, and the daughter would do well to marry him, although he cannot compel her to perform what he promised, he can disinherit her, for the reason that she was not grateful to her father for the benefit he desired to confer upon her, and caused him sorrow through her disobedience. And this is understood if thereafter she should marry another against her father's will or commit carnal sin.

LAW XI.**Who Should Have the Choice of Giving or Taking Either of the Daughters Betrothed by Their Parents.**

Where one man swears to, or promises another, that he will take one of his daughters for his wife, as stated in the preceding law, and they give their consent, and agree to what their father does, the latter who made the promise can select whichever one he wishes to give. The same rule will apply where a father promises,

in the first place, to give his daughter to someone for his wife, but does not state specifically which one, for the father is at liberty to give which one he thinks best, and not the one which the other party asks for. If, after the promise has been made, the father should designate one of his daughters as the one he will give, mentioning her by name, and the other party should say that he does not want her but one of the others; the father is released from the promise which he made, and need not give him one of the other daughters if he does not desire to. And if before the father designates any one of them as the one to be given, all of them should die, excepting one, although he may not have intended to give her to him, he will be bound to do so to keep the promise which he made. And if the party who promised to marry any one of a man's daughters should lie with one of them before her father has given or designated her, he is bound to take her for his wife; and, if he is not willing, he should be compelled to do so. What is stated in this law and the preceding one concerning daughters applies also to sons.

LAW XII.

What Affinity Arises Among Men from Betrothals, by Which Marriages Are Prevented.

There is a connection, resembling affinity, which arises from betrothals, and this connection is called in Latin *publicae honestatis justitia*, as stated in the law¹ of this Title which begins, "There is no difference." A connection of this kind is an obstacle which prevents the female relatives of the betrothed woman from marrying the man who is betrothed, and, on the other hand, none of the male relatives of the man who is betrothed can marry the betrothed woman within the fourth degree, and if they do, the marriage should be annulled. This law all men deemed proper should be observed on account of the honor of the church, and the equality of the people, and to avoid scandal among them. A connection of this kind also is made between those who can legally marry, as well as among those who cannot do so, and this is understood to apply where the betrothed parties have reached the age of seven years, or a little less, so as to have acquired sufficient intelligence to be content with the betrothal.

¹ IV *Ante*, 882.

TITLE II.

Which Treats of Marriages.

Our Lord God established marriage between man and woman in Paradise, for the reasons we mentioned in the beginning of this Partida; the holy fathers, however, assigned other and spiritual reasons for which they held that He did this. The first was to supply the tenth order of angels, who were lacking after they fell from heaven on account of their pride. The second, to avoid the sin of lust, which a married man, who desires to live properly, can do better than another. The third, in order that a man may have greater love for his children, he being certain that they belong to him. The fourth, to avoid quarrels, homicides, insolence, violence, and many other very wrongful acts which would take place on account of women if marriage did not exist.

Wherefore, since in the preceding Title we spoke of betrothals, we intend in this one to treat of marriages, called, in Latin, *matrimonia*; and we shall explain, in the first place, what marriage is; whence it obtained this name, what profit is derived from it; in what place it was established, and when; by what words, for what reasons, and in what way it should be contracted; what persons can marry; what force marriage has; and what things prevent it, or annul it, although it may have been already contracted.

LAW I.

What Matrimony Is.

Matrimony is the union of husband and wife, made with the intention of always living together, and not separating, each of them being faithful to the other, the man not uniting with another woman or she with another man, while both are living. However, where matrimony was contracted by words relating to present time, as set forth in the preceding Title which treats of betrothals, although it is stated in this law that they should always live together, a reason exists why this cannot be. For if either of them desires to enter a religious order before they have had carnal union, he or she has that privilege, although the other may oppose it; and after said person has entered the order, and has made profession, the other party can marry if he or she desires to do so. But where the marriage has been consummated, carnal union having taken place, neither of them can enter a religious order if the other opposes it.

LAW II.

From What Source Matrimony Derived Its Name, and for What Reason It Is Also Called Marriage, and Not Patrimony.

Matris et munium, are Latin words from which the term matrimony is derived, which means, in Castilian, the duty of a mother. The reason why marriage is called matrimony, and not patrimony, is because the mother endures greater hardships with children than the father. For, although the father begets them, the mother suffers great inconvenience while pregnant, as well as severe pains when she brings them forth and they are to be born, and after they are born she undergoes great privations in bringing them up by herself; and, in addition to this, because the children, while they are small, have greater need of the assistance of the mother than of the father. On account of all the duties aforesaid, which are the part of the mother rather than the father to perform, marriage is called matrimony, and not patrimony.

LAW III.**What Benefit Results From Marriage, and How Many Advantages Are Derived From It.**

Very great benefit and many advantages arise from marriage, as stated in the introduction to this Fourth Partida, and even omitting them, three things namely, faith, offspring, and sacrament, are derived from it. This faith is the loyalty which one should observe toward the other, the wife not having anything to do with another man, nor the husband with any other woman. The second advantage, that of offspring, is having children lawfully to increase the human race, and all should marry with this intention, not only those who cannot have children, but also those who do have them. The third advantage, that of the sacrament, is that the parties should never separate during their lives, and, since God united them, it is not right that man should put them asunder. Moreover, love should increase between husband and wife, since they know that they cannot separate, and are more sure of their children, and love them the more on this account. Notwithstanding all this, they can separate where one of them commits the sin of adultery, or enters a religious order with the consent of the other, after they have had carnal union. And although they may be separated so as not to live together for one of these reasons, still, on this account, the marriage will not be dissolved.

LAW IV.**In What Place Matrimony Was Established, and When, and by What Words, and for What Reasons.**

The terrestrial paradise is the place where marriage was first established, and this was done before Adam sinned, as the first law of this Title states. As the Holy Fathers explained, if our first parents had not sinned, children, both male and female, would have been born to them, without the pleasures and covetousness of the flesh. The words by which marriage was contracted are the following which Adam said when he saw Eve his wife, as stated in the Title concerning betrothals, namely, that her bones and flesh were his, and that they should both be one flesh. For marriage was not instituted, as some think, by words when our Lord blessed Adam and Eve, and said to them: "Increase and multiply and replenish the earth;" for these words were only those of blessing, and besides, the others by which marriage was contracted had already been mentioned in the first place.

The principal reasons for the institution of marriage are two in number; first, to have children and increase the race of men, and on this account Our Lord God originally established marriage in Paradise, as above stated; second, in order to protect men from the sin of fornication, and this St. Paul established by the grace of the Holy Spirit, as stated in the first law of this Title. And although other reasons induce persons to contract marriage, as, for instance, to remove enmity from families; or on account of female beauty; or for the sake of wealth; or because the parties are of high rank, yet it was especially instituted, and should be contracted for the two reasons aforesaid, according to the laws of God and man.

LAW V.**In What Way a Marriage Should Be Contracted.**

Consent alone, with the desire to marry, constitutes matrimony between a man and a woman; and this is the case for the following reason, namely, although words may be spoken, as they should be for the purpose of marriage, if the will of the parties who utter them does not coincide with them the marriage is not valid so as to be genuine; though the Church may decide that it is valid where the words

are proved to have been uttered, because they were employed in such a way that marriage was contracted by their means, and it is not proved that they were spoken in any other way than to evince a wish to marry, as, for instance, where they were spoken in jest, or to show by what words a marriage could be contracted. There is a way, however, by which matrimony can be contracted without speech, and merely by consent. This would be the case where anyone who is dumb marries, for although he may be unable to contract marriage by speech, he can do so by signs, showing his consent. For signs prove consent among those who are dumb, just as much as words do among those who can talk. The same rule applies to deaf persons who cannot hear anything.

And although it was stated above in this law that matrimony is only contracted by consent, if those who contract it can speak, it is proper that they do this by words, in order that the marriage can be proved, if it should be necessary. Matrimony can be contracted by the parties themselves, who are to marry, or by their relatives, or by messengers from their families, or by other strangers acting under their direction, and it should be done openly and not secretly, so that it can be proved.

LAW VI.

Who Can Marry, and Who Cannot.

All persons can marry who are sound in mind so as to give their consent to marriage, and they must be of such a character that they have no impediment preventing intercourse with women, except such as the law especially forbids to marry. And although boys and girls, who are not of age, may utter the words which constitute matrimony, for the reason that they have not sufficient understanding to give their consent, a marriage entered into by persons of this kind will not be valid. Moreover, a person who has been emasculated, or is lacking in the organs of procreation although he may have sufficient understanding to consent, a marriage contracted by him will not be valid, for the reason that he cannot procreate. Moreover, a person who is insane and has never been free from insanity, cannot give his consent to marry, even though he may utter the words by which matrimony is contracted. Where, however, a party has been insane occasionally, and afterwards gains possession of his senses, and, at the time when he was in possession of his faculties, consents, the marriage will be valid.¹

LAW VII.

What Force Marriage Has.

Marriage, of itself, constitutes a great bond and force, so that after it is contracted between parties, as it should be, it cannot be annulled so as not to exist, even though one of them should become a heretic, a Jew, or a Moor, or should

¹ The laws of all countries are, generally speaking, in accord as to what constitute physical and mental impediments to marriage. Every code of jurisprudence adopted by civilized nations prohibits matrimony between persons related to one another, however remotely, in either the direct ascending and descending lines. This is the rule of such widely divergent systems as those of the Mosiac, Canon, and Mohammedan law. The union of relatives in the collateral line within the fourth degree is the regulation ordinarily accepted. This is not universally the case in the United States, in some of which the marriage of first cousins is legal, and where formerly a man might contract matrimony with his niece. In Louisiana, all impediments to marriage in the collateral line, beyond the second degree, are abolished. (Civil Code of La. Art. 97.) By the law of England, thirty persons connected by the ties of consanguinity or affinity are forbidden to intermarry. Incapacity to consent is, of course, an insuperable obstacle—"Consensus, non concubitus, facit nuptias"—but an insane person can be married during a lucid interval, just as he can enter into any other contract.

By both the civil and the common law the age of nubility was fixed for the two sexes at fourteen and twelve years, respectively; the canon law made it dependent on the development of the individual. In Spain, males under fourteen and females under twelve, and in France and Italy males under eighteen and females under fifteen cannot legally marry. The law of Louisiana coincides with that of Spain in this respect. (Civ. Cod. of La. Art. 93.) The age at which marriage can take place with the consent of parents or guardians varies greatly in the other states of the Union. By the Moslem law, mindful of Oriental precocity, infants of any age can be contracted in marriage by those having charge of them. The conditions establishing a degree of affinity which prohibits matrimony with a relative of the woman concerned are very curious, and are enumerated with a degree of minuteness not found in ordinary treatises on jurisprudence, and quite shocking to modern ideas of propriety. (The Hedaya. II-1-2.)—Ed.

commit adultery. And although marriage has this power, it can be annulled by the Holy Church for any of the above-mentioned reasons, so far as to prevent the parties from living together, or from having carnal intercourse, as stated in the Title concerning the Clergy, in the law which begins: "Where sane persons agree." But where one of the parties married becomes blind, deaf, or deformed, or loses his limbs through suffering or disease, or in any other way whatsoever; on account of none of these things, not even though one of them may become a leper should he or she be deserted by the other, in order to keep the faith and loyalty which they promised one another at the time of marriage; but they should live together, and the healthy one take care of the other, and do for him or her everything which is necessary, as far as possible.

What is stated above with regard to a leper is to be understood as follows, namely: that where the party who is healthy receives much annoyance from the other, he or she can use another room, and leave the bed so as not to be continually together; but the one who is well should serve the other in everything, and comply with all marital obligations whenever it is demanded; except where the party who is a leper is compelled to live in a house with other lepers, where there are no separate apartments. Under these circumstances the party who is well will not be required to dwell with the other in a house of this kind, but will be obliged to attend to him or her, while living outside, as above stated. If they have children, they should live with the parent who is healthy, and not with the other, in order that they may not be exposed to the disease. Moreover, where they have had carnal intercourse together, neither the husband nor the wife have the right to enter a religious order, or take any other vow, or observe chastity without the consent of the other; but the husband has authority over the person of his wife, and she over that of her husband, so far as these matters are concerned. The Church also has power to employ compulsion against any married person, where one makes complaint of the other that he or she refuses to lie with him or her, and, in a case of this kind, the Church should compel the party to do this, although they may never have been united; and it should not avoid doing so even though one of them may have lain with a relative of the other after they were married.

Marriage has still another power, namely: although persons may be married they should avoid carnal intercourse on the days of great festivals and on fast days, but, nevertheless, if one of them should make a request of the other for this purpose on any of these days, the latter should manifest no opposition, but is bound to comply. Marriage has another power according to ancient laws, so that even if a woman is of low birth and should marry a king, she shall be called a queen; and if she should marry a count, a countess; and even after her husband is dead, she shall receive this title if she does not marry another of inferior rank; for women obtain honors and dignities through their husbands, and by reason of them. And, above all the honors which laws grant to women on this account it is the greatest that the sons which they have by their husbands, while they live with the latter, are considered their sons and have the right to inherit their property, and therefore they should honor, protect, and preserve their husbands above everything else in the world, and their husbands should treat them in like manner.

LAW VIII.

When Persons Who Are Married and Accuse One Another of the Sin of Adultery, Whether the Party Who Brings the Accusation Should, or Should Not Comply with the Will of the One Who Is Accused, While the Case Is in Progress.

Where one of two married persons accuses the other of adultery, for purposes of separation, as, for instance, where the wife accuses the husband, or the husband the wife, and, while the case relating to the accusation is in progress,

the accused party demands of the other the continuance of marital relations the latter should comply if the adultery is not publicly known, for he cannot be deprived of his rights before he is defeated in court; but where the adultery is publicly known the request should not be complied with except where the same party has been guilty of the sin of adultery, for, in a case of this kind, there should be compliance, since both have equally sinned, for the reason that the offence of each of them prevents him or her from accusing the other; for it would be an outrageous thing for the husband to leave his wife for the sin of adultery, if it should be proved that he has committed the same offence.

LAW IX.

How Marriage Frees a Man From Sin When He Lies with His Wife.

A husband and a wife have an excuse for not sinning sometimes when they lie together. And because they are impelled to this by four reasons, and for some of them they are guilty of sin and for some of them they are not, the Holy Church made a distinction in the following manner, namely: first, when the husband and wife have carnal intercourse for the purpose of having children, they are not guilty of any sin, for they only perform their duty according to the command of God. Second, when one of them copulates, not because of desire but to comply with the request of the other; in this case also no sin is committed. Third, when the flesh is triumphant, and desire exists, and it is considered better to unite with one who is married than to commit fornication elsewhere; in this case a venial sin is committed, for the reason that the party is influenced rather more by the flesh than by the wish to have children. The fourth is, where a man exerts himself through his own wickedness, and increases his powers by eating hot electuaries, or by employing other measures; in this he is guilty of mortal sin, for it is a very outrageous thing for him to treat his wife as unreasonably as he would any bad woman, by goading himself to do what nature has not conferred upon him the power to perform.

LAW X.

What Things Prevent Marriage.

There are fifteen things which prevent marriage from being contracted; first, when a mistake occurs in the persons of those who marry, the man thinking that they are giving him one woman while they are giving him another instead, and the same rule applies where a woman thinks she is marrying one man and she is marrying another; for whichever of them errs in this way, he or she does not consent to accept the other, and, for this reason, the marriage will not be valid, and, if it has been contracted, it can be annulled; except where the party again gives consent after he recognizes the other. This should be understood in the following way, namely: where a woman thinks she is marrying a man whom she has slightly known by sight, or by reputation or report, and another man comes and she believes that it is the former, and he marries her. But where a woman has no such acquaintance with, or knowledge of, a man, and another comes in his name and marries her, the marriage cannot be annulled on account of an error of this kind, because the woman does not make any mistake, so far as the other party is concerned, of whom she has no knowledge, but she is mistaken in the one whom she sees in her presence. A mistake of this kind is not personal, because the party is seen, but it relates to another matter, called, in Latin, *error qualitatis vel fortunae*, which means an error of rank or fortune, as where the party says that he is the son of a king, or someone else of noble rank, and it is not true; or where he states that he is rich, when he is poor. The same rule applies and the marriage will be valid, where anyone marries a woman who says that she is a virgin when it is not true.

LAW XI.**Concerning the Condition Called Servile, and Concerning a Solemn Vow by Which Marriages Are Prevented.**

The servile condition is the second thing by which a marriage may be prevented; therefore, when a man who is free marries a woman who is a slave, or a woman who is free marries a man who is a slave, not knowing that they are such, the marriage will not be valid except where the party who is free gives his consent to the other by word and deed, after he ascertains the fact either by agreeing to the marriage or by having carnal intercourse with the other. But where a marriage of this kind is contracted, and the party who is free knew that the other was a slave before it took place, the marriage will be valid and it cannot be annulled on this account.

The third thing which is an impediment to marriage is, a solemn vow which anyone takes to enter a religious order, as stated in the Title concerning Monks, in the law which begins "A solemn;" for a vow of this kind prevents the contraction of marriage, and where this is done it should be annulled. But where the vow is a simple one, as stated in the law which we referred to above, although it is an impediment to marriage and affects its validity, it should not be annulled after it has been contracted.

LAW XII.**Concerning Carnal and Spiritual Relationship, and Affinity, Which Are Impediments to Marriage, and Cause It to Be Annulled.**

Relationship and affinity within the fourth degree, is the fourth thing which prevents the contraction of marriage, and, where it is contracted, should cause it to be annulled. Moreover, the spiritual relationship existing between godfathers and their godchildren and adoptive fathers and their adopted children, is an impediment to marriage, and if it has been contracted should cause it to be annulled. For a godfather should not marry a godmother, or an adoptive father his adopted daughter, or an adopted son or an adopted mother the son or daughter of their adoptive father or their adoptive mother, for they are spiritual brothers and sisters. Moreover where a man adopts a woman he should not marry her, nor should any of his sons, so long as the adoption lasts, and the same rule applies where a woman adopts a man.

LAW XIII.**Those Who Commit the Sin of Incest Should Not Marry.**

Men very frequently commit vile and outrageous sins so that marriage is prevented by them. This is the fifth thing which prevents men from marrying, and in order that they might avoid committing such sins the Holy Church deemed it proper to explain what they were. One of these is called, in Latin, *incestus*, which means a sin a man commits when he knowingly lies with one of his female relatives, or with a female relative of his wife, or with any other woman within the fourth degree; or where he lies with his stepmother, or with his mother, daughter, sister-in-law, or daughter-in-law; or where anyone lies with a woman belonging to a religious order; or with his adopted daughter or with his godmother. The same rule applies to women who lie with men with whom they are connected in any of the above-mentioned ways, and any of the aforesaid persons who commit sin of this kind should not marry, but if they do, although they ought not, the marriage will be valid. And although, as above stated, those who commit the sin of incest should not marry, still, where some commit this sin when they are so young that they could not observe chastity, the church can grant them permission to marry. Each one of the persons aforesaid who has committed a sin of this kind,

even though he may be married, should not have carnal intercourse with his wife except at such time as she requests it; and, even after she dies he should not marry unless he was so young that he could not observe chastity; if, however, he does marry the marriage will be valid.

LAW XIV.

What Sins Are Such Impediments to Men as to Prevent Them from Marrying.

Men sometimes kill their wives without reason and without justice, and for the reason that the Holy Church considered this sin a very serious one, it forbade a party who committed it from marrying. Moreover, any one who carries away the betrothed of another by force and lies with her, should not marry. The same rule applies to anyone who maliciously removes his son from the baptismal font while he is being baptized, with the intention of separating from his wife so as to have nothing to do with her. It also applies to one who kills a priest qualified to say mass, or anyone performing solemn penance, as stated in the Title concerning Sacraments, in the law beginning, "The saints wrote."

And although none of the persons aforesaid ought to marry, where they are young men who can not preserve their chastity, the church should grant them permission to marry; if, however, they do marry without such permission the marriage will be valid, as stated in the preceding law.

LAW XV.

In What Way a Difference of Religion, or Force or Fear Are Impediments to the Contraction of Marriage.

A difference of religion is the sixth thing which operates as an impediment to marriage. For no Christian should marry a Jewess, Moorish woman, a heretic, or any other woman who does not profess the Christian religion, and if he does so the marriage will not be valid. A Christian can, however, be betrothed to a woman who does not profess his religion with the understanding that she will become a Christian before the marriage is consummated, and if she does not become a Christian the betrothal will be void.

The seventh thing which is an impediment to the contraction of marriage is force or fear. The employment of force is understood as follows, namely; where anyone is brought against his will, or taken prisoner, or bound, and compelled to consent to marriage. And, moreover, fear is said to be employed when this is done in such a way that any man, although he may be of great courage, feels the sensation of fear as, for instance, where he is shown arms or other weapons, with which parties intend to wound or kill him; or where they desire to inflict some punishment upon him; or where a person who has been a slave, and who is now free, is threatened to be returned to slavery and this would be the case where someone deprives him of the document which is the evidence of his freedom, and tells him that he will burn or destroy it if he does not contract a marriage; or where a young girl is a virgin, and the parties threaten to lie with her, if she does not consent to said marriage.

And not only are all these things above-mentioned impediments to the contraction of marriage, but where it has already been contracted it can be annulled on account of any one of them; except where the party against whom force or fear was used is content with the marriage, and agrees to it.

LAW XVI.**What Religious Orders Are Impediments to, and Annul Marriage.**

There are nine ranks of religious orders in the Holy Church, as stated in the Title concerning the Clergy, and of these the three principal ones offer impediments to marriage. Wherefore any member of the clergy who has received any one of the three principal orders, namely, those of deacon, sub-deacon, or priest, should not marry, and, if he does the marriage should be annulled. This is the eighth thing which is an impediment to the contraction of marriage, and on account of which, where it has been contracted, it should be dissolved.

The ninth thing is when any one is impotent, through some deformity with which he is afflicted, so that he cannot have intercourse with a woman. This, however, is understood to apply to the case where the impediment existed before he was betrothed to her by words relating to the present time. But where an impediment of this kind, or one caused by sickness, or any other of any description whatsoever happens after the marriage has been contracted, it should not be annulled for this reason, except where spiritual or corporal fornication was committed. Spiritual fornication takes place where the party becomes a heretic, or embraces another religion, and corporal where he lies with another woman who is not his wife, or she with another man who is not her husband.

LAW XVII.**What Impediments Hinder and Prohibit Marriage.**

Publicae honestatis justitia means, in Castilian; the law which should be observed for the sake of the purity of the Holy Church and the people. This is the tenth thing which is an impediment to the contraction of marriage, and, where it is contracted, annuls it. Affinity within the fourth degree is the eleventh thing which is an impediment to marriage, and annuls it where it has been contracted, as stated in the Title concerning Betrothals. The twelfth thing which is an impediment to marriage, and annuls it if it has been contracted, is where a man is of so cold a nature he cannot copulate with a woman. The thirteenth thing which is an impediment to marriage, and annuls it, is where a person who is insane marries, as is stated in this Title, in the law which begins, "All those can marry." The fourteenth thing which is an impediment to marriage, and annuls it, is when those who marry are not of age, and have not sufficient understanding for mutual consent, and are not properly formed for carnal intercourse in either member or body.

LAW XVIII.**Persons Should Not Marry Against the Prohibition of the Holy Church, or During Festivals.**

The prohibition of the Holy Church is the fifteenth thing which prevents marriage, and this would apply where parties wish to marry, and others oppose them by stating that they were relatives or kindred by affinity; or that one of them had been betrothed elsewhere; or interpose some other lawful impediment on account of which they should not marry; and the church, for any of these reasons, forbids them to do so until it is positively ascertained whether the impediment was of such a character that the marriage ought not to take place, and the parties should not marry under such a prohibition. If they should do so, and the impediment was of such a nature that the marriage could not be annulled on account of it, the parties should remain united and should not be separated forever but only for a specified time, if their prelate

considers it proper for them to do penance for the offence which they committed in marrying against the prohibition of the Holy Church.

The season of festivals is also an impediment to marriage in some respects, for betrothed persons should not marry at those times, or a bride be placed in the power of her husband that he may lie with her. Where, however, any persons act contrary to this law they should not be separated for this reason, except in the way above-mentioned; but, if it is not desired to separate them they should perform penance for doing this at a time when they should not. Although these things cannot be done upon festival days, betrothals can be made on such occasions, as well as marriage by words relating to the present time. The festivals on which these things should be avoided are the following, namely; from the first Sunday in Advent until the eighth day of the Epiphany, and from the third Sunday before the first Sunday in Lent until eight days after Easter, and from the Monday of St. Mark's day, which precedes Ascension day, until Pentecost, ending on Saturday.

LAW XIX.

Concerning Those Who Commit Adultery With Married Women, and Whether or Not They Can Marry Them After the Death of Their Husbands.

All those men who lie with married women are guilty of depravity and great sin, and a sin of this kind is called adultery. And although this is a very serious offence, if the husband of the woman who committed adultery should die, the man who committed the act with her can marry her, if he has no other wife, except in three instances. First, where either of them killed, or caused to be killed, or plotted the death of the other husband, or wife, with the intention of marrying him or her afterwards. Second, where the party who lies with the woman swears to her, and promises her that he will marry her after her husband is dead. Third, where a man lies with another man's wife, and marries her during the lifetime of her husband; for even though the latter should die, the marriage previously made will not be valid. The same rule applies to a woman who commits adultery with a married man in any one of the three ways above-mentioned. And although they may desire to live together, those who marry in any of the ways above-mentioned, should be separated by the Church, except where either of them was not aware that the other was married when the marriage took place; for, under these circumstances, the party who did not know this has the choice of remaining with the other, or of leaving him or her and marrying elsewhere.

TITLE III.

Concerning Betrothals and Marriages Which Take Place in Secret.

Men think and suspect that most things which are done in secret are not as good as those which are done openly, and for this reason Solomon said that whoever does wrong abhors the light in order that men may not ascertain what he does, and Our Lord Jesus Christ said the same thing. Wherefore the wise men who made the laws sometimes imposed a greater punishment upon those who sinned in secret than upon those who did so openly; and because this concealment sometimes happens in the case of betrothals and marriages, the Holy Church forbade them to be contracted; first, because marriage is a sacrament established by Our Lord, as we have stated; and second, because many evils arise from this.

Wherefore, since in the preceding Titles we spoke of marriages celebrated openly, we intend to speak here of those that are celebrated in secret, and show in how many ways this can be done, and for what reason the Holy Mother Church forbade it; when a marriage celebrated openly is an impediment to one that takes place in secret; and what punishment those should receive who are betrothed or married by stealth.

LAW I.

In How Many Ways Secret Marriages Are Celebrated, and for What Reason the Holy Church Forbade Them to Be Performed by Stealth.

There are three kinds of marriages which are called clandestine. First, when they are performed secretly and without witnesses, so that they cannot be proved; second, when they are performed in the presence of others, but the bride is not asked of her father or mother, or any other relatives who may have charge of her, and her dowry is not given in their presence, or the other rites which the Holy Church directs performed. Third, when the parties do not publish the banns in the church where they are parishioners, for, in order that the marriage may not be performed in secret, it is necessary before the parties are married that the priest should state in the church before all those who are present, that "Such-and-Such a man desires to marry Such-and-Such a woman, (mentioning them both by name) and that he notifies all those there present, that if any one among them knows the existence of any impediment on account of which one should not marry the other, he should say so before a certain day," which he especially designates. And, moreover, the priests should exert themselves in the meantime to ascertain, as far as they can do so, whether any impediments exist between the parties, and when they find any indications of one they should forbid the marriage until they learn whether or not it is of a character to prevent it. The reason why marriage is forbidden by the Holy Church to be performed secretly, is the following; because if disagreement arises between the husband and the wife, so that one of them is not willing to live with the other, although the marriage was genuine, as above stated, the church cannot, on this account, employ compulsion against the one who wishes to leave the other. This is the case because the marriage cannot be proved, for the church cannot decide matters which are concealed, but only those concerning which parties made statements which were proved.

LAW II.**A Marriage Openly Performed, Is an Impediment to One Performed in Secret.**

Where discord arises between a husband and wife, who were secretly married, and the one who leaves the other afterwards marries another person publicly, the Holy Church has decided that the second marriage, and not the first, is valid, even though the first may be genuine, and may be valid in the sight of God and those who contracted it. This is the case on account of the reason mentioned at the end of the preceding law. Moreover, where any of those we have mentioned, as having secretly married, confess and acknowledge openly that they are husband and wife, their confession and acknowledgment will be valid, and they should afterwards be considered as husband and wife; except, where, after this, any person appears who says that he married one of them before, and proves this, as the Holy Church directs. In this instance the aforesaid acknowledgment will not affect the marriage proved in this manner. And although an acknowledgment of this kind is valid to establish the marriage as permanent, as above mentioned, if the parties make another kind of a confession for the purpose of obtaining a separation; as, where they say that they are relatives or kindred by affinity, or have any other connection of this kind, such a statement will be of no effect, unless it is proved, or well known in the greater part of the neighborhood that the fact is as stated by the parties. If, however, either of the said married persons acknowledges that he or she has committed adultery, in this instance the allegation must be believed, and this is the case because, by an admission of this kind, the marriage is not absolutely annulled but only so far as carnal intercourse is concerned.

LAW III.**What Punishment Those Should Receive Who Are Betrothed or Married Clandestinely.**

Where persons marry secretly, and any impediment exists between them, as, for instance, that of relationship, or one of any other kind whatsoever on account of which they cannot be husband and wife, they shall be punished as follows, namely; their children shall not be legitimate, nor can the latter avoid this by saying that their father or mother was not aware of said impediment when they married. This is the case because when persons marry clandestinely it would appear that they knew that some impediment existed between them which would prevent them from doing so, or, at least, that they did not wish to know it. Moreover, where persons marry publicly, being aware that an impediment of this kind existed between them on account of which they should not marry, their children will not be legitimate; but where one of them knew this, and both did not, in an instance of this kind the children will be legitimate, for the ignorance of one of them prevents it from being said that their children are not legitimate.

LAW IV.**What Punishment Priests Should Receive Who Perform, or Do Not Prohibit Marriages Which Should Not Be Contracted When They Know of the Existence of Any Impediment, or Have Heard of Any Affecting Those Who Desire to Marry.**

When a parish priest, or any other priest neglects to forbid persons from marrying when he has heard that some impediment exists between them which should prevent them from doing so, and he does not prohibit it, and they are

married secretly, or in the presence of several persons; or if he is present when they are married, he should be forbidden by the prelate of the neighborhood where this happened to perform the service of the order to which he belongs, for the space of three years. In addition to this he can impose a greater penalty upon him, if he thinks he deserves it, and the priests above-named should not only suffer the penalty aforesaid, but also any member of the regular clergy who violates this law; and those who marry secretly against the prohibition of the Holy Church, although no impediment may exist to prevent it, must, nevertheless, do penance, such as their prelate may consider appropriate. Where anyone actuated by malice desires to prevent persons from marrying, by saying that some impediment exists between them which he cannot prove, he should be punished as the judge thinks proper.

LAW V.

What Punishment the King Has Established to Be Inflicted Upon Those Who Marry Women Clandestinely, Without the Knowledge of Their Parents.

Marriage is such a holy and excellent thing that good and affection should always arise from it among men, and not evil or hatred. And in order that good and affection, and not the contrary, may spring from marriage, the Holy Church thought that it should be contracted openly, and not in secret, as it is well known that an evil intention influences men who contract marriages by stealth, without the knowledge of the relatives of those whom they marry, and that more evil than good generally results from them. For sometimes great enmity and the death of persons, and serious wounds, and great expense and injury arise from marriages of this kind, since the relatives of the women consider themselves dishonored, because, on account of their levity, they married such men as did not deserve to have them as wives, and who even after they have married them waste their property and desert them, so that there are some that on account of their poverty become bad women.

Still another evil arises from this, for many persons are guilty of perjury, for the reason that, in cases of this kind, false witnesses and spurious evidence are often introduced. Wherefore, We, for the reason that we desire that the orders of the Holy Church be observed, and, moreover, to avoid all these evils and many others which may spring from this source, hereby forbid anyone to dare to marry by stealth or secretly; but they should marry openly, and with the knowledge of the father and mother of the woman whom the man desires to marry, if she has parents, and, if not, with the knowledge of her other nearest relatives.

Where anyone violates this law we order that he be placed in the power of the nearest relatives of the woman he married, along with all his property, but we forbid them to kill him, or wound him, or do him any other harm except to make use of his services as long as he lives. For it is proper, since he inflicted such dishonor upon the woman and her parents, that he should undergo this penalty by which he may always remain disgraced. If he cannot be found, we order that all his property be seized and placed in the possession of the parents of the woman.

TITLE IV.

Concerning the Conditions Imposed by Men in Betrothals and Marriages.

Conditions are a kind of special contracts which men agree upon with one another, and they are of such a nature that, where they are complied with, they confirm the contract to which they relate, and where they are not complied with, men are not bound to observe the contract which depends upon them. Although this happens in many instances it occurs with special frequency in marriages. Wherefore, since in the preceding Titles we spoke of betrothals and marriages, which ones annul them, and which are invalid, all of such as are contracted under certain conditions. We shall show, in the first place, what a condition means and to how many things the name applies; what is called a condition and how many kinds there are; what conditions protract betrothals and marriages which are contracted simply, we intend to speak here though they may have been agreed to.

LAW I.

What the Word Condition Means and Under What Circumstances It Can Assume This Name.

A condition means a contract or agreement entered into with respect to some other contract, by means of the word "if"; as where one party says to another: "I promise to give you a hundred maravedis if you will go to Such-and-Such a place for me." This condition is of such a nature that, if it is complied with, it confirms the contract to which it refers, and if the party should fail to carry it out, the principal agreement will be invalid. For this reason until it is positively ascertained whether the condition has been complied with or not, the principal contract to which it relates remains in abeyance.

The term called condition has reference to three things, namely; the persons of men, their property, and the promises which they make to one another. That which relates to persons, is as follows. There are men who are of servile condition, and others who are free, and this also applies to property. For some of the latter is servient, as, for instance, such as is taxable, or that over which men have authority to make use of it in a certain way, although it belongs to some one else; and there is other property which is free, as, for instance, such as each man separately holds and no one else has a right of servitude therein. In promises the condition is made in the following manner, for instance, where one man says to another: "I promise to pay you a hundred maravedis, if Such-and-Such a man goes to Such-and-Such a place;" as above stated.

LAW II.

How Many Kinds of Conditions There Are.

Promises or donations are made in one of the four following ways. They are either made under restrictions or conditions, or for some certain reason, or by some indication. They are made under restrictions, as, for instance, where one party says to another; "I will give you a hundred maravedis for building me a house;" and by the words "for building me a house," which he speaks, it is understood that there is a purpose and not a condition in the agreement, and this is especially indicated, by what the party says. Where a promise is made under a condition this would appear when one party says to another; "I will give you a hundred maravedis if you will go to Rome for me;" as stated in the preceding law. A promise is made for a reason, which is called in Latin, *causa* where one party says to another; "I will give, or I promise to give, you a hun-

dred maravedis, for such-and-such work, or such-and-such a service which you have performed for me;" and this speech which the party makes shows the reason for which the donation or promise was made. This is done as an indication, when one party says to another, "I promise to give you a slave that I shall buy of So-and-So, (mentioning him by name) who has such-and-such a trade," (or indicating the slave by some particular mark). By this speech, "that I shall buy from So-and-So," or by the other "So-and-So who has such-and-such a trade," or by the mark which he designates, it is understood that the contract is one of indication. And although it is stated in the beginning of the preceding law that the word condition relates to three things, this Title only treats of the third kind, that is to say, of promises and conditions of this description. Of the other kinds which we mentioned in this law we shall speak fully in the Fifth *Partida* of this book, which treats of the contracts and agreements which men make with one another.

LAW III.

What Conditions Protract Betrothals and Marriages.

Distinctions exist, in many respects, between the conditions imposed by men on betrothals and marriages, for some of them are suitable and appropriate, and others are not. Of those which are suitable and appropriate there are some which men make voluntarily; there are others which it is fitting should be made under all circumstances; and there are still others which are neither proper nor honorable, for instance, such as are opposed to betrothals and marriages and prevent them, and there are those which are not. Conditions that are appropriate and suitable, and which men can voluntarily impose, are such as the following, namely; "I will marry you if you will give me a hundred maravedis, or such-and-such a castle;" (or some other property of this kind).

When a condition like this is imposed the marriage is protracted on account of it, so that the party is not required to conclude it, nor can be compelled to do so until the condition has been complied with; except where, after this, he has carnal intercourse with the woman, or marries her subsequently by words relating to the present time. In either of these cases he is bound to marry her, and if he is not willing he can be compelled to do so. A condition of this kind is called honorable, for the reason that there is no impropriety in it, nor depravity of any kind. It is also called voluntary, because it is in the choice of those who are to marry to agree to it or not.

LAW IV.

Concerning Conditions Which Are Suitable, and in What Way They Are Imposed.

A condition which is imposed on any betrothal or marriage must be suitable in every respect, and such a one is that made in the following way, namely, when a Christian marries a Jewish or Moorish woman, whether he does so with words relating to the present or future time, by speaking as follows: "I receive you, or promise to receive you, as my wife, if you will become a Christian." A condition of this kind is called suitable, in Castilian, which means in Latin *honesta*, for it is not suitable for a Christian man to marry any other woman but one who is herself a Christian. It is called necessary, because it must be imposed on all betrothals and marriages, and complied with in every respect, for, under other circumstances, the betrothal or marriage will not be valid.

LAW V.**What Conditions Annul Marriages.**

Conditions which are directly opposed to the nature of matrimony, are unsuitable, improper, and dishonorable. For instance, where anyone when betrothing himself to, or marrying a woman, says: "I will take you for my wife within a year from now, (or within some other stated period and no longer), or until I find another who is richer or of higher rank;" or where he says "I betroth myself to you, or I will marry you, if you will contrive, by the use of herbs or other means, to have no children;" or where he says that he betroths himself to her or marries her, if she will lie with men for what they give her; for where any of these conditions is imposed neither the betrothal nor the marriage in which it is done will be valid.

LAW VI.**What Conditions Are Invalid, Although They May Be Imposed on Marriage.**

There are other conditions that are base and dishonorable which are not opposed to the nature of matrimony, as where a woman says to some man; "I will marry you, or promise to marry you, if you will steal a certain piece of property, or kill a certain man." There are other conditions called, in Latin, *impossibles*, which means that they cannot be complied with; as, for instance, where some man or some woman says: "I will marry you if you will give me a mountain of gold; or if you will reach up to heaven with your hand." Conditions like those above-mentioned in this law, and others similar to them, are worthless, although they may be imposed, but neither betrothals or marriages are prevented on account of them, even though they cannot be complied with.

TITLE V.

Concerning the Marriages of Slaves.

Servitude is the vilest and most contemptible thing that can exist among men, for the reason that man, who is the most noble and free among all the creatures that God made, is brought by means of it under the power of another, so that the latter can do with him what he pleases, just as he can with any of the rest of his property living or dead. And slavery is such a contemptible thing, that the party who is subjected to it not only loses the power of disposing of his property as he desires, but he has not even control of his own person, except under the orders of his master. Wherefore, since in the preceding Title we spoke of the impediments which exist in marriages and betrothals, by reason of the conditions which men impose on them, some promising others to give or to do something, and afterwards do not keep their promises; we intend in this Title to speak of other impediments which also arise, because of persons being of a servile condition. We shall show, in the first place, whether slaves can marry, with whom they can do so, and if the consent of their masters is required; and what law should be observed in a marriage contracted between a slave and a person who is free.

LAW I.

Whether Slaves Can Marry, Whom They Can Marry, and Whether the Consent of Their Masters Must Be Obtained.

It was a practice in ancient times, and one approved by the Holy Church, for slaves to marry one another; moreover, a slave can marry a free woman, and the marriage will be valid if she knew that he was a slave when she married him. A female slave can marry a freeman under the same circumstances, but they must be Christians for the marriage to be valid. Slaves can marry one another, and although their masters oppose it, the marriage will be valid, and should not be annulled for this reason if both give their consent, as stated in the Title concerning Marriages. Although they can marry against the will of their masters, they are nevertheless bound to serve them as they formerly did; and where several men own two slaves, who were married, and it becomes necessary to sell them, it should be done in such a way that they can live together, and serve those who purchase them. They cannot be sold, one in one country and one in another, because they would have to live apart, and where a slave belonging to one man marries a free woman, or a free man marries a female slave, and the master of either of them is present, or aware of it, and does not say at the time that he or she is his slave; by this act alone, which the master sees, or is aware of, but remains silent, the slave becomes free, and cannot afterwards be returned to slavery. And although it is stated above that a slave becomes free for the reason that his master sees him married, or knows of it, and conceals his ownership, nevertheless, the marriage will not be valid, because the woman did not know that the man was a slave when she married him, except where she afterwards gives her consent either by word or deed.

LAW II.

Under What Circumstances a Slave Is Bound to Obey the Order of His Master, Rather Than That of the Woman Whom He Married.

Where a master calls his slave to order him to perform some service, and at the same time his wife calls him to perform his marital obligations, in a case of this kind, a slave should rather obey the order of his master than that of his

wife; except where the husband thinks that if he does not comply with her request, she will be guilty of depravity with some one else. Where two slaves who are married have two masters, one in one country and the other in another, and they are so far apart that where they serve their masters they cannot join one another and live together, the church can then compel one of the masters to buy the slave of the other. Where they are unwilling to do this, whichever one of them the church may select can be compelled to sell his slave to some man who is a resident of the town or community where the master of the other slave resides, and if no one wishes to buy him, the church should do so, in order that the husband and wife may not be separated.

LAW III.

What Law Should Be Observed in a Marriage Contracted Between a Slave and a Freeman.

Where a female slave belonging to any person marries a freeman, and the party who married her was not aware that she was of the servile condition, the marriage in this way will not be valid, as stated in the Title concerning Marriages, in the law beginning, "A servile condition." Moreover, when a slave marries a free woman, thinking that she was a slave, he cannot separate from her by saying that he made a mistake, for, since he married a woman of superior condition to himself, he cannot allege that he was deceived. This is understood to apply where she desires to remain with him knowing that he is a slave. If, when she married him, she did not know that he was a slave, although she may have ascertained it afterwards, she has the choice to remain with him, if she desires to do so, or to leave him. Nor can a slave, thinking that he is marrying a free woman when he marries a slave, leave her by saying that he made a mistake; for he should not consider himself deceived by such an error, nor should the marriage be annulled on account of it, since he married a woman of the same condition as himself.

LAW IV.

Concerning Men Who Marry Female Slaves, Thinking That They Are Free.

Men sometimes decide upon marriage, thinking that they are marrying free women, and marry slaves. Wherefore, when a man marries a woman of this kind, not knowing that she is a slave, and, her master subsequently sets her free, although some persons are of the opinion that the marriage is confirmed by an enfranchisement of this kind, it is not true. This is the rule on account of the mistake which was made in the marriage in the first place, where the party thought he was giving his consent to a free woman when he was not. If, however, after he learned that she was of such a condition he should give his consent by word or deed to accept her, the marriage will be valid, and the parties should not be separated. Where a freeman marries a female slave, not knowing that she is such, and her master brings a suit against her for her services, after her husband learns that she is of such a condition he should not have carnal intercourse with her, even though she requests it. For if he should lie with her after she has lost the suit, even though she should be returned to slavery, he cannot separate from her. The same rule applies where the wife is free, and proceedings are instituted against the husband, to prove that he was a slave. Where a husband knowingly becomes a slave, in order for having a reason for leaving his wife, his act is not valid, nor should the marriage be annulled on this account, but his wife can claim him and release him from servitude if she desires to do so; and

this is the case because she has a right in him, and for the reason that great dishonor may result from this source to her and to her children, if she has any. The way in which a freeman can become a slave is explained hereafter in the Title concerning Slaves.¹

¹ According to the Roman laws, true marriage could not exist between free persons and slaves, under any circumstances, nor were slaves permitted to marry one another. For the ceremony to be valid both parties were required to be Roman citizens, and even in the degenerate days of the Empire the matrimonial union of a member of a noble family with a woman of foreign birth, no matter how high her rank, was regarded with anything but complacency by his relatives and friends. The Visigothic Code punished free persons of either sex who married slaves, with a hundred lashes, which penalty was repeated for each time that the parties cohabited, and after the third offense they became the property of the master of the slave in question. Children sprung from such an alliance, where the offender was a woman, followed the condition of the servile father, thus reversing the ordinary rule, "*Partus ventrum sequitur*"; and remained in perpetual slavery. "*Filii tamen, quandocumque, et quancumque ex ea iniquitate fuerint procreati, conditionem patris sequantur, ut in servitio permaneant.*" (For. Jud. III-II-8.)

In Louisiana, and indeed all the southern states, in slavery times, marriages between freemen and slaves were void. (Civ. Cod. of La. IV-2-Art. 95.)—Ed.

TITLE VI.

Concerning Relationship and Affinity, Through Which Impediments to Marriage Arise.

The relationship of consanguinity is something which unites men in great affection, because they are one naturally by blood; nevertheless, while on one side they are united in this way, at the same time they are separated where marriage is concerned. For, although in ancient times members of the same family married one another, the holy fathers who lived afterwards forbade this in the old as well as in the new religion, and they gave many reasons on account of which they held that it was not proper that this should be. First, because relatives are brought up and live together, not loving one another with any other affection but that arising from the obligation of kindred. And also because if they knew that they could be married and united without sin, those who have been brought up together would do this more readily than elsewhere. Moreover, before a marriage took place—and leaving this out of consideration—many disputes would arise among male relatives, each one desiring to have some female relative, in order to marry her and acquire her property; and on account of this many disagreements would arise among them, and great hatred, so that, on the one hand, they would desire to join their blood by means of matrimony, and on the other they would be separated by enmity; and also for the reason that all men would then live apart, each in his own family, like factions, since they would not unite in marriage with strangers.

Wherefore, since in the preceding Title we spoke of impediments arising in marriage by reason of servitude, we desire to speak here of others arising by reason of relationship or affinity. We shall first explain natural relationship, what it is and whence it derived this name, and what kindred is; how relationship descends or ascends, and how many lines there are; what a degree by which relationship is reckoned is, and how many kinds there are, and in what way they should be reckoned; and within what degrees persons should not be united in marriage, and after this we shall explain what degree of affinity is an impediment to marriage.

LAW I.

What Natural Relationship Is, and Whence It Derives This Name.

Consanguinitas, in Latin, means relationship, in Castilian, which is the bond or tie of separate persons, descended from one root, and this tie originates from the act of procreation made by the union of man and woman. For this reason mention is made of separate persons, for relationship cannot exist in one man alone, but among several; moreover, it is said they are descended from one root to let it be understood that it differs from relationship by affinity, for although in this case there may be the tie of affection there is no natural relationship, and this is because kindred by affinity are not descended from a single root, as relatives are. That is called a root from which other persons descend, as, for instance, Adam, from whom were descended Cain and Abel his sons as well as all others. Natural relationship takes this name from father and mother, for from the blood of both of them children spring. On this account relationship is called in Latin *consanguinitas*, because children are begotten by the union of the blood of father and mother.

LAW II.

What a Line Is by Which Relationship Descends or Ascends, and How Many Lines There Are.

A line of relationship is a regular connection of persons, attached to one another, like the links of a chain, through their descent from a single root, and who constitute different degrees among themselves. And for the reason that some may doubt or not understand this connection of degrees, except where they see it, we have deemed it proper to cause a tree to be drawn, which explains this matter plainly, and to insert it in this book in order that men may the better comprehend it; for those things which men see they learn more easily than others which they have to acquire by hearing. And although in the beginning of this law we stated what a line of descent is, we desire men to know that there are three kinds of lines. First, one which ascends, as for instance, that of a father, a grandfather, a great-grandfather, or a great-great-grandfather, or still farther up. Second, the descending line, as, for instance, that of a son, a grandson, a great-grandson, or a great-great-grandson, and still farther down. Third, the collateral line, which begins with the brothers, and from them descends by degrees through their sons and grandsons, and others of the same lineage. This line is called collateral because those included in its degrees are not born one of the other.

EXPLANATION OF THE TREE ¹**Which Treats of Consanguinity, According to the Canon and Civil Law, by the Following Rules.****According to the Canon Law It Is Explained by Three Rules.**

The first rule is that in the direct ascending line, according to the number of persons whose lineage is sought, the intermediate ones having been computed one must be deducted, according to the number of degrees. Thus, for instance, if you desire to know how far the great-great-grandfather was removed from the *Petrucio* (which is the empty circle), reckoning both of them and the intermediate ones, five persons will be found, then after deducting one, there will remain four degrees, and this should be done likewise with all others.

The second rule is, that in the equal collateral line there is the same distance from the common trunk, as there is between the persons. As, for instance, where the great-great-grandfather is taken as the trunk, there is the same distance between *Petrucio*, and the great-grandson, brother of the great-grandfather; for these men are in an equal line, each one four degrees distant from the trunk, wherefore the same distance exists between themselves.

The third rule is, that in the unequal collateral line, the same distance from the common trunk exists as between the persons. As, for instance, if we make the great-great-grandfather the trunk, *Petrucio* and the sons of the brother of the great-grandfather are in an unequal line, reckoning them from *Petrucio*, as he is distant four degrees from the trunk, the same as the others aforesaid.

According to the Civil Law.

The first rule is, that in the direct ascending and descending line, as many as are the number of persons who are sought, they being reckoned from the center and one being deducted, so many are the degrees among them.

¹ For the illustrated tables of consanguinity and affinity cf. various editions of *Las Siete Partidas*, e.g.; Salamanca, Portonaris, 1555; Salamanca, Partonarijs, 1565; Madrid, Hasrey, 1610-11; Valencia, Lucas, 1758; Madrid, B. Cano, 1789.

The second rule is, that in the equal collateral line, in proportion to the number of degrees that one is distant from the common trunk, the same distance, multiplied by two, exists between the persons, because, according to the civil law, each person constitutes a degree in the collateral line.

The third rule is, that in the unequal collateral line, starting from the trunk, the degrees are equal in number to the persons. Whoever wants a better explanation than this should have recourse to Juan Andrés.

EXPLANATION OF AFFINITY

According to the Canon, and Civil Law.

Affinity, according to the canon law, is a connection of persons resulting from carnal intercourse and destitute of all consanguinity. Affinity is so called to express the unity of two persons for one end, for the reason that two different ideas are united in it, either by means of betrothals, according to the laws, or by copulation, according to the canons. It should be made known that affinity is a perpetual impediment which lasts after the death of the person by means of whom it arose, as stated in the Decree *Fraternitatis*, 35-95.

By means of carnal intercourse between the blood relatives of the wife and the husband, and those of the husband and the wife, affinity of the first description is contracted, according to the degree of consanguinity; wherefore, if a blood relative of yours should know your wife, and you desire to learn his degree of affinity to you, examine to what degree your blood relative belongs, and his affinity will be the same to your wife, and so on, always in the same generical class.

Between the blood relatives of the woman and the man, and between those of the man and the woman, affinity is therefore said to arise because between themselves, as husband and wife, it is not contracted but they are the cause of the affinity. Again, between the blood relatives of the man and the blood relatives of the woman, no affinity exists; wherefore two brothers may marry with two sisters, and a father and a son with a mother and a daughter, except where the affinity exists between the husband and the blood relatives of the wife, and the reverse.

An Infallible Rule to Recognize Affinity.

Whenever between one of the persons among those concerning whom inquiry is made and the wife of another there is not, and has not been, consanguinity within the fourth degree, no prohibition exists; as for instance between myself and the wife of my grandson marriage cannot be contracted, because he is a blood relative within the fourth degree.

Another Example.

My sister married and died, and her husband married another woman; if he should die, I could marry the wife that he left, for the reason that between myself and her there is not, and has not been any consanguinity, etc.

LAW III.

What a Degree Is by Means of Which Relationship Is Reckoned, and How Many Kinds There Are.

The degrees of relationship are reckoned in two ways; first, according to the *fuero* of the laymen; second, according to the ordinances of the Holy Church. That which is according to secular law is stated as follows; a degree is the manner of separation of persons, who are united by consanguinity, by which manner is

shown in what degree one person is related to another, the root where they originated being always taken into consideration. According to the *fuero* of laymen, the children of a person of this kind who is called the root, constitute the second degree, whether there are two or more of them; the grandchildren constitute the fourth degree; the great-grandchildren constitute the sixth, and according to the rule the reckoning can be extended.

The other way which is according to the ordinances of the Holy Church, is stated as follows; a degree is a convenient and proper way to classify persons united by consanguinity who descend equally from one root by separate lines. According to the ordinances of the Holy Church the children of a person of this kind who is called the root, constitute the first degree, although they may be in separate lines; and the grandchildren constitute the second degree, the great-grandchildren the third; and the great-great-grandchildren the fourth degree, and so on. The reason why the secular *fuero* computes the degrees of relationship in one way, and the church in another, is this, because the secular *fuero* reckons only in what way they should inherit from one another when they die and do not make a will, and the church considers in what way they should marry. The distinctions which exist between the degrees recognized by said *fueros* have reference, however, to persons descending by collateral line, and not to those who ascend or descend in a direct line, for on this point both *fueros* agree.

LAW IV.

In What Way the Degrees of Consanguinity Should Be Reckoned, and Within What Degree Persons Cannot Be United in Marriage.

The Holy Church reckons four separate degrees of consanguinity, and declares that they should be counted in the following manner, namely: in the direct ascending line the father and mother constitute the first degree; the grandfather and grandmother the second; the great-grandfather and the great-grandmother the third; and the great-great-grandfather and the great-great-grandmother the fourth. In the direct descending line, the son and daughter constitute the first degree; the grandson and granddaughter the second; the great-grandson and the great-granddaughter the third; and the great-great-grandson and the great-great-granddaughter the fourth.

In the collateral line the brother and sister are in the first degree; the children of the brother and sister in the second; and the grandsons and granddaughters of brothers and sisters in the third; and the great-grandsons and the great-granddaughters of the brothers and sisters in the fourth. In the degrees of direct ascending or descending lines no marriage can take place, although these degrees may be distant from one another, but in the collateral lines, those on the one side can marry those on the other, beyond the fourth degree.

LAW V.

What Affinity Is, and Within What Degree It Is an Impediment to Marriage.

Affinitas, in Latin, means affinity, in Castilian, and affinity is the connection of persons which is derived from the carnal union of a man and woman and no other relationship whatever arises from it. This affinity only proceeds from the carnal union of a man and a woman, whether they are married or not, for although some may be betrothed or married, affinity is not derived from them unless they have sexual intercourse. Formerly, there were three kinds of affinity, and they were observed for a certain time. Now, however, the Holy Church only directs that the first shall be observed, and this takes place when a man has carnal intercourse with a woman, whether he is married to her or not. For by a union of this

kind all her relatives become connected by affinity with the man; and, on the other hand, his relatives become connected by affinity with the woman, each one of them in the same degree in which they are related. And it happens by an affinity of this kind that when any one of those who have become connected by such a union dies, an impediment arises on this account which prevents the party who survives from marrying any of the relatives of the deceased within the fourth degree, just as in the case of consanguinity.

LAW VI.

Concerning Moors and Jews Who Marry Their Female Relatives of Their Kinswomen by Affinity, as Permitted by Their Religion, and This Is No Impediment to Them After They Become Christians.

The relationship of first cousins and of other relatives which we mentioned in former laws—who should not marry within the fourth degree and where they do marry such marriage should be annulled—and the other impediments which we have described arising from marriages by reason of affinity mentioned in the preceding law, are understood to refer to marriages contracted between Christians. But where the parties are Moors or Jews, and marry according to their laws, being relatives or kindred by affinity, and afterwards some of them who are married in this way become Christians, their marriages should not be annulled on this account, although they may be relatives or connected by affinity within the fourth degree. The Holy Church permitted this for the sake of the honor and increase of the faith, in order that those who did not acknowledge our religion might not be prevented from becoming Christians, on account of the grief which they would feel from separating from their wives whom they had married according to the rites of their religion.

TITLE VII.

Concerning the Offices of Godfather, and of Father by Adoption, Through Which Impediments to Marriage Arise.

The office of godfather is a spiritual impediment by means of which marriages are often prevented. And since in the preceding Titles we spoke of natural impediments which may arise on account of consanguinity, we desire to speak here of this one. We shall show, in the first place, what the office of godfather is; how many kinds there are; in what ways it is created; which sons of godfathers and godmothers can marry; and after this we shall speak of adoption by which also marriages are prevented.

LAW I.

What the Office of Godfather Is, and How Many Kinds There Are.

Spiritual relationship is a connection which arises between men, through the Sacraments administered in the Holy Church. This is the case when a priest baptizes a child, for then he who baptizes him and all others who remove him from the baptismal font, whether they are men or women, become the spiritual parents of that child. The person who holds a child before the bishop, when he confirms it by anointing it, acquires the same relationship.

There are three kinds of spiritual relationship; the first is the connection between the party who confers baptism and the father and mother of the child who is baptized. And even where the person who conferred the baptism has a legal wife, she will also be connected in the same way with the father and mother of the child who is baptized. The second is that which is established between the person who is baptized and him who baptizes him, and also between them and those who remove him from the baptismal font, for they are called spiritual parents, and he a spiritual child. The same rule applies to women legally married to the persons aforesaid and who are called the spiritual mothers of the person who is baptized, although they may not be present when this takes place. The third kind is the brotherhood which arises between a spiritual child and the real children of the godfathers and godmothers.

LAW II.

In What Way the Connection from Which Spiritual Relationship Arises Is Created.

Confirmation and baptism are two sacraments, from which the connection of spiritual relationship arises. This connection arises from confirmation which bishops make upon the forehead by means of chrism as stated in the Title concerning sacraments, in the following manner; for the bishops who confer the rite of confirmation, as well as those who hold the chrism, become the godfathers of the persons anointed, and these godfathers bear this relation to the fathers and mothers of those whom they held when the bishop confirmed them.

The same thing occurs in baptism, whether the person who confers the rite is bishop, priest, or layman, or man or woman. But neither this connection nor spiritual relationship arises from any of the other things which take place before baptism; as, for instance, when, at the door of the church, they blow upon the person whom they desire to baptize, and cause him to renounce the devil and all his works; nor are marriages prevented from taking place between persons of this kind or the parents of those who are blown upon.

LAW III.**Which Sons and Daughters of Godfathers and Godmothers Can Marry.**

The sons and daughters of two godfathers have the right to marry, with the exception of the godchildren by whom the relationship was established; for these cannot marry the sons or daughters of their godfathers or godmothers, for the reason they are spiritual brothers or sisters. This should be understood as referring to the sons and daughters of those who were born before the relationship was established, as well as those who were born subsequently. And, just as no one has a right to marry his earthly brother and sister, so also the Holy Church forbids anyone to marry his spiritual brother or sister, who is the godson or the goddaughter of his father or mother. Moreover, as no one should marry his or her earthly father or mother by whom he was begotten, so also no one should marry his spiritual father or mother who baptized him, or held him while this was done, or removed him from the baptismal font, or who confirmed him, or held him when he was confirmed.

LAW IV.

**In What Way a Man Can Marry Two Women Between Whom the
Relationship of Godmother Existed, or One Woman Can Marry
Two Men Connected by the Relationship of Godfather,
and No Impediment to the Marriage Arise.**

After a husband and wife are married, if it happens that the husband had a child by a former wife, or his wife one by a former husband, those who are the godparents of a person of this kind will be the spiritual parents of the father and mother of him or her, and not of the other party. In a case of this kind it might happen that one man could marry two women between whom this spiritual relationship existed. For if one of the women should die he could marry the other, and the fact that this relationship existed between them would be no impediment to the marriage.

The same rule applies to a woman, who can marry two men between whom this relation exists in the way above stated that a man could marry two spiritual mothers, and this is the case because the party is the son of one of them only, and not of both. There is another reason why a man can marry two women connected by spiritual relationship. This would occur where a man was betrothed, and, before he had carnal intercourse with her, his affianced became the godmother of some person removed from the baptismal font or held during confirmation; for, in this instance, the spiritual mother of the betrothed woman does not bear this relation to the man, and this is so because they have not yet been carnally united. Wherefore if the said woman should die, although he may have had intercourse with her after the spiritual relationship was established, the betrothed man, or the husband has the right to marry the spiritual mother of his betrothed. The same rule applies to a man who is betrothed, if he had become godfather for anyone in the manner above-stated concerning the woman.

LAW V.

**What Distinction Exists Between Spiritual and Carnal Relationship and
Affinity, in Order to Offer No Impediment to Marriage.**

Spiritual relationship has no resemblance to carnal relationship and affinity. This is the case because in carnal relationship and affinity there are four degrees, within which no man or woman can marry his or her relative, or anyone connected with them by affinity. But, for the reason that no degree exists in spiritual

relationship, a godfather or godmother can marry the son or daughter of his or her godchild. Also a godfather or godmother can marry the brother or sister of his or her godchild, and this is the case because neither the godfather nor the godmother are in any way related to the children of their godfathers or godmothers, except to those who are their godchildren; nor, on the other hand, are they related to the brothers or sisters of their godchildren. They are only related to their godchildren or to their spiritual fathers or mothers, and for this reason no man or woman, of those above-mentioned, can marry any person between whom and them spiritual relationship exists.

LAW VI.

Where Men Fraudulently Contrive to Become Spiritual Relatives of Their Wives in Order to Separate From Them, This Will Avail Them Nothing.

Hatred causes some men to do things contrary to justice. For this reason the Holy Church deemed it proper that where a man maliciously removed his son or daughter from the baptismal font, or held his stepson or stepdaughter when he or she was confirmed, in order to have a cause for leaving his wife because of spiritual relationship; the party who acted in this manner should not be permitted to leave his wife on account of a fraud of this kind, although a party who commits such an act is guilty of grievous sin.

The same rule applies when a man does this in any other way whatsoever, through not paying attention, and thinking that he was not committing any offence. There is an instance, however, in which a man can knowingly baptize his child and not be guilty of sin on this account, or be separated from his wife by reason of spiritual relationship; and this is where one is compelled to baptize his child, seeing that it is about to die, and baptizes it before it dies, there being no one else to do so.

LAW VII.

What Adoption Is, How Many Kinds There Are, and How It Prevents Marriage.

Adoption is a kind of relationship established by the secular *fuero* which is an obstacle to marriage in addition to the other kinds of relationship, both carnal and spiritual, which we mentioned in the preceding law, by means of which impediments arise. A relationship of this kind is called, according to the laws, a legal bond of adoption, which men establish among themselves through the great desire which they have to leave someone to inherit their property; and for this reason they accept as their son, grandson, or great-grandson a person who is not actually so. An adoption or relationship of this kind is established in two ways. First, it is done by permission of the king or by the ruling prince of the country, and is called, in Latin, *arrogatio*, which means, in Castilian, the adoption of a man who is by himself, and has no carnal father, or if he has, has left his control and come under that of the party who adopts him. An adoption of this kind is established by the king or prince questioning the party who adopts the other: "Are you willing to accept this person as your legitimate son;" and he should answer that he is, and he should also ask the party who is to be adopted, "Are you content to be the son of this man who adopts you;" and he should answer that he is. Then the king should say: "I grant my permission;" and then give his letter.

The second kind of adoption is that which is established by the consent of some judge. This is called in Latin, *adoptio*, which means, in Castilian, the

adoption of a man who has a carnal father and who is under his control, and for this reason he does not come under that of the party who adopts him. We have thoroughly explained this kind of adoption, in the Title concerning Adoptions. A relationship of this kind is an impediment to marriage, for a father who adopts some woman, or accepts her as his granddaughter or great-granddaughter, can never marry her, even though the adoption be annulled. The same rule applies where any woman adopts a man by order of the king, as stated in the Title already mentioned. Moreover, carnal children cannot marry those whom their fathers or mothers adopt, as long as the adoption lasts, but if the adoption is annulled they have the right to marry. Where, however, one person adopts many children, so that there are both males and females among them, these have the right to marry one another, whether the said adoption is annulled or not.

LAW VIII.

**An Adopted Son Cannot Marry the Wife of the Party Who Adopted Him,
Nor Can the Party Who Adopted Another Marry the Wife of the Latter.**

Between a person who is adopted and the wife of the party who adopts him affinity arises which prevents marriage, as it also does between the wife of the person who was adopted and the party who adopts him. An affinity of this kind prevents an adopted person from marrying the wife of the party who adopts him, nor can the party who adopts said person marry his wife; whether the adoption is annulled or not, as stated in the preceding law explaining how it could be annulled. And this relationship or affinity, when established as the law directs, not only is an impediment to marriage, but annuls it where it has been contracted. Moreover, this relationship or affinity, arising from adoption and by reason of which marriages are prevented, is not considered to cause an impediment to arise between other persons mentioned in this law and in the preceding one.

TITLE VIII.

Concerning Men Who Cannot Cohabit With Women, or the Latter With Them, on Account of Impediments Which Exist in Them.

Some men and women are defective, so that they cannot have sexual intercourse with one another, and this happens for two reasons. First, because that they are so formed that they cannot do this. Second, on account of some evil which they commit. And for the reason that from some accidental cause like this an impediment exists so that those who are thus afflicted cannot marry, and even if they did, they would have to be separated on this account; therefore since in the preceding Titles we have treated of other impediments which prevent marriage by reason of relationship, affinity, spiritual alliance, or adoption, we intend to speak here of that which arises from any of the above-mentioned causes. We shall show in the first place what it is that prevents this being done; in how many ways and how marriage is prevented; and how and when marriages should be annulled when an impediment of this kind arises.

LAW I.

What It Is That Prevents a Man From Lying With Women, and How Many Kinds of This Impotence Exist.

Infirmary of mind or body, or both together in a man constitute a weakness or impediment which prevents sexual intercourse with women. There are two kinds of this impotence. First, that which results from some defect of nature, as where a man is of such a frigid disposition that he cannot exert himself for this purpose, and when a woman is so formed that a man cannot have sexual intercourse with her, or when impediments exist through the parties not being of age, as is the case of children. Second, that which arises accidentally through injury, as, for instance, where persons are rendered impotent by some artificial deformity, or are emasculated accidentally or where this is done by the hands of some one.

LAW II.

How and When Marriage Is Prevented by Impotence of This Kind.

Impotentia in Latin, means, in Castilian, want of power, and this want of power to copulate with women, by means of which marriage is prevented, is divided into two kinds. First, that which lasts for a certain time; second, that which lasts forever. That which relates to a certain time occurs in children, and it hinders them from marrying until they are of age, although they can be affianced, as stated in the Title concerning Betrothals; the other kind which lasts forever is that which occurs in men who are cold by nature, and in women who are so formed that it is impossible for their husbands to have carnal intercourse with them. The Holy Church can annul the marriage because of an impediment of this kind where either of the parties requests it, and should grant permission to the party in whom no impediment existed to marry again.

LAW III.

**What Should Be Observed Where a Woman, Who Was Inaccessible to Her
First Husband, After She Has Been Separated From Him,
Marries a Second.**

Where a woman is so formed, as stated in the preceding law, that she must be separated from her husband, and she afterwards marries another man who knows her carnally, she should be separated from her second husband and returned to the first, for the reason that it would appear that if she had remained with him he could have known her as the other did. They should, however, before they are separated undergo a physical examination, and if it should be found that a great difference does not exist between the first and the second husband, she should be returned to the first. But if it should be found that a great difference did exist, she should not be separated from her second husband, for the reason that it is clearly apparent that the impediment existing between herself and her first husband will be permanent.¹

LAW IV.

Emasculated Persons Cannot Marry.

Those persons are emasculated who, through some accident, have lost the organs of generation, as, for instance, where anyone leaping over a fence tears them off; or where said organs are destroyed by a bear, a hog, or a dog; or where he is deprived of them by some man, or loses them in any other way whatsoever. Wherefore anyone who has met with an accident of this kind cannot marry, and, if he does, the marriage will not be valid,² for the reason that a person of this kind cannot fulfill his marital obligations which he is bound to do. After the Holy Church has separated the parties, the woman can marry another man if she desires to do so. However, if it happens that anyone after being married or betrothed by words relating to the present time, meets with such a loss as we have mentioned above through any of the accidents aforesaid, the marriage is not annulled on this account, nor can either of the parties marry again while both are living; except where one of them enters a religious order before they have carnal intercourse.

LAW V.

**How and in What Way a Marriage Should be Dissolved Where Impotence
of This Kind Is Alleged or Proved.**

Where a man or woman uses spells, or is guilty of some other evil action so that he cannot have carnal intercourse with his wife, or she with him, it may happen that the effect of an evil deed of this kind will last forever, or

¹The text of this law, if literally translated, while it might "make the unskillful laugh, cannot but make the judicious grieve," and has therefore been paraphrased. The original is as follows, "*Pero ante que los departan, deuen catar, si son semejantes, o iguales, en aquellos miembros que son menester para engendrar. E si entendieren que el marido primero non lo ha mucho mayor que el segundo, estonce la deuen tornar al primero. Mas si entendieren, que el primero marido avia tan grande miembro o en tal manera parado, que por ninguna manera non la pudiera conocer sin grande peligro della, maguer con el ouiesse fncado, por tal razon non la deuen departir del segundo marido; porque parece manifestamente, que el embargo que era entre ella, e el primero marido, duraua por siempre.*"—Ed.

²According to the Mohammedan law, a term of one year's probation is allowed a husband against whom a charge of impotence is brought, in order to establish a presumption of permanent incapacity. "This term is fixed at one year, because that contains four seasons, and diseases are principally occasioned by an excess of heat, cold, dryness or humidity, qualities which are peculiar to each season respectively;" is the singular reason given, which is founded upon the antiquated theory accepted in the infancy of medicine. The wife enjoys the sole right to demand a separation, as a husband cannot annul the marriage on account of a defect in her, as the law only authorizes divorce for leprosy, scrofula, and insanity, or some effect resulting from these infirmities. (The Hedaya IV-11.)

The Italian Code very properly divides impotence into organic (*instrumentale*) and functional, the latter not affording sufficient cause for separation, owing to its ordinarily temporary character. Where the party accused refuses to submit to a medical examination, the condition cannot be presumed, or further proceedings take place. (Cod. Civ. d' It. I-V. Art. 107.)—Ed.

only for a certain time.¹ And where one or both of them complain before a Judge of the Holy Church, stating that they should be separated on account of an impediment of this kind; in order that the party whose duty it is to effect such a separation may ascertain how he should act, and when, he should appoint a term of three years for them to live together, and should take their oath that they will endeavor, as far as they are able, to have carnal intercourse. If they are unable to accomplish this within the said period, and one or both of them complain a second time, the impediment is understood to be a perpetual one, but before they are separated, they should be examined by reliable men and women, to ascertain whether it is true that the alleged impediment exists between them.² After this each one of them should be sworn in the following manner: namely, the man that he swears in good faith and without deceit that he endeavored, to the best of his ability, to perform his marital duties, but was unable to accomplish it. The woman also should swear that she was not guilty of any deceit, and interposed no obstacle of any kind to prevent her husband from copulating with her. Together with the husband seven good men, his relatives, should make oath also—if he has such relatives in that locality, and if not, other persons—that they believe he swore to the truth, and the woman should also swear in the same way along with seven female relatives or other good women of the neighborhood. After this they should be separated, and permission should be granted to both of them to marry, if they desire to do so.

¹ This idea, wide spread and universally and implicitly believed during the Middle Ages, was one of the innumerable superstitions inherited by the Church from pagan Rome. Popular fear and ignorance legislated against the incantations and spells of magicians and soothsayers long before the compilation of the Twelve Tables. Numerous laws were promulgated by the emperors to prevent and punish the exercise of their nefarious arts, which were considered highly detrimental to society, and whose professors were declared enemies of the entire human race. "*Omnes magi, in quacumque sint parti terrarum humani generis inimici credendi sunt.*" (Corp. Jur. Civ. Cod. IX-XVIII-7.) The peculiar influence rendering a husband incapable of performing his marital functions is referred to in a general way in the Visigothic Code. "*Qui maleficium, aut diversa ligamenta, aut etiam scripta in contrarietatum alterius excogitaverint facere, aut expleverint, per quod alium laedere, aut mortificare, vel obmutescere velint, damnum tam in corporibus, quam etiam in universis rebus, id patiantur, quod eis fecisse reperiuntur.*" (For. Jud. VII-II-4.) The Law of the Twelve Tables forbade such practices. (Leg. XII Tab. VII-XIV.) Classic writers abound with references to this singular belief. Philosophers like Plato, poets like Ovid and Virgil, historians like Tacitus, all allude to it as a generally accepted fact. In mediæval times the knotting of points was one of the mysterious powers claimed by every witch, magician, and professional imposter, who were far from enjoying a monopoly of it, however, as every court and castle abounded in amateurs incited by envy, malice, jealousy, and hatred, to exert their baleful influence upon their superstitious companions. The antidotes or counter-charms against this affliction were almost as numerous, and fully as much abused as the instrumentalities which were supposed to cause it. The process which brought about this loss of virile power was known in France as "*nouer l'aiguillette*", "to knot (or tie) the points", or tags with which men in former time fastened their clothing. It is alluded to by Voltaire in "*La Pucelle*," as follows:

*"C'est une étrange et terrible recette,
Et dont un Saint ne doit jamais user
Que quand d'un autre il ne peut s'aviser
D'un pauvre amant, le feu se tourne en glace:
Vif et perclus, sans rien faire, il se lasse."*

Authorities on this subject have mentioned more than fifty ways of causing this alleged enchantment, and the number might indeed be increased indefinitely, as the effect produced depended entirely on the credulity and susceptibility of the victim to the mental impressions conveyed by his tormentor.

The canon law makes this condition, where satisfactorily established, a just cause for the separation of husband and wife, and the gentlemen of the clergy, while fully as credulous as their neighbors, found it greatly to their advantage to encourage the ridiculous belief—not even yet extinct among the peasantry of Europe—whose effects sometimes yielded to the potent but expensive employment of relics, prayers, and exorcism. As a matter of fact, the infirmity being wholly attributable to psychological influence and auto-suggestion, the only method which could possibly afford relief must necessarily be of the same character; hence the occasional efficacy of religious ceremonies which appealed directly to the mind of the sufferer. Modern works on hypnotism cite frequent cures of psychic impotence—in our day a not unusual misfortune—by the use of suggestion.—Ed.

² This method was subsequently greatly in vogue during the fifteenth and sixteenth centuries in France, where it was applied by the authority of the secular tribunals. The evidence was usually obtained by what was known as the *congres juridique*, in the presence of experts of both sexes appointed by the court as commissioners, and who required a practical experimental demonstration of the capacity or incapacity of the parties concerned. It is needless to say that such an unseemly performance, carried out under such conditions, in the majority of instances defeated its object, and was productive of much pleasantry to the spectators and not a little embarrassment to the participants. The reports of the commissioners are given with a wealth of amusing detail, and offer a singular and instructive picture of the manners of the age.—Ed.

LAW VI.**How the Term of Three Years, Imposed Upon Those Who Marry Persons Who Are Bewitched, Should Be Understood in Order to Produce a Separation.**

Where a man is naturally cold, so that he cannot have sexual intercourse with a woman, and marries, and one of the parties makes a complaint before a judge of the Holy Church, stating that they ought to be separated by reason of such impediment, a term of three years should be appointed; the oath of the parties should be taken; and all the other things stated in the preceding law should be observed, which said matters should be performed and carried out with regard to the parties who are bewitched, before the marriage is annulled. This is understood to apply where the woman is a virgin, for the reason that physical evidence can be obtained that, during the said term of three years, she was not carnally known. But where a man of this kind who is cold by nature marries a woman who is corrupt, it ought to be understood in another way. For if the woman, after she learns that her husband has such an impediment, does not at once, or at the latest within a month, complain of him, and afterwards she does make complaint, and the husband alleges that her statements are not true, and swears that he did know her carnally; in this case the term of three years should not be given, nor should she be heard with regard to the matter, for the reason that a suspicion will arise against her, since so many days elapsed without her making complaint, that he had sexual intercourse with her, and for that reason her husband, and not herself, should be believed. If, however, she did complain at once, or before a month has passed, she should be heard, the term of three years should be appointed, and everything else mentioned in the preceding law should be observed. This should also be done where the husband and wife admit that an impediment of this kind exists between them.

LAW VII.**What Distinction Exists Between Persons Who Are Bewitched and Those Who Are Cold by Nature.**

Those who are bewitched, and those who are cold by nature are two kinds of men who are prevented from marrying, as stated in the preceding law. A distinction, however, exists between them, for when the one who is cold by nature is separated from his wife by order of the Holy Church, and afterwards marries another woman, he should be separated from the second one, and compelled to return to the first. This is the case because he appears to have acted in contempt of the Holy Church by marrying a second time deceitfully, for anyone who is cold by nature is the same with one woman as with another. But where a man is bewitched, if the Holy Church separates him from his wife and he afterwards marries another woman, he has the right to remain with his second wife, and should not return to the first. This is the case because he might have been bewitched by his first wife and not by his second.

TITLE IX.

Concerning Accusations Made to Prevent or Annul Marriage.

An accusation to annul a marriage should be made before the judges of the Holy Church, when anyone desires to prove that an impediment arose between married persons, for which their marriage should be annulled. And, since in the preceding Titles we spoke of the impediments which prevent men from marrying and because of which their marriages should be annulled, where such men do marry; it is proper that we speak in this Title of the accusations by means of which marriages are annulled. We shall show, in the first place, who can call a marriage in question; for what reasons, before whom, and in what way, the accusation should be made, and what persons can testify in order to annul or confirm a marriage.

LAW I.

Who Can Impugn a Marriage and for What Reasons.

A wife can accuse her husband, and a husband can accuse his wife, in order to annul the marriage, if the impediment which exists between them is of such a character that no blame attaches to it; as, for instance, where the husband cannot cohabit with her, or where either of them is impotent. No one but themselves can bring a charge of an impediment of this kind, for the reason that they are more familiar with it than anyone else can be. If, however, they desire to be silent concerning an impediment, and live together, not as husband and wife, for the purpose of carnal intercourse, but as brother and sister, they can do so. This would also be the case where a free man marries his slave, or where a free woman marries a slave, not being aware of the fact. No one else has the right to accuse either on account of a difficulty of this kind.

Where an accusation is made for any of the reasons aforesaid, it is not understood to be, properly speaking, an accusation, but a complaint or a request; because those who bring such a charge against one another, do not commit such a sin that the said impediments arise between them through their fault, but through the bad conduct of some one else, or from a natural accident, or by a mistake, where the party thought he was marrying a person who was free, and married a slave.

LAW II.

Before Whom an Accusation of Adultery Can Be Made, and in What Way.

A husband and a wife can accuse each other in another way, in addition to those mentioned in the preceding law. This is because of adultery, and where the accusation is brought for the purpose of separation, so that they may not live together or have carnal intercourse, no one else should make said accusation but themselves against one another. An accusation of this kind can be brought by them in person, as well as by an attorney, and it should be made before the bishop or his representative. Every man who knows that his wife commits adultery is bound to accuse her, if he thinks she does not wish to abandon her sin but desires to continue in it, and if he does not do this he is guilty of a mortal sin. If, however, he understands that she has abandoned her sin, and is performing penance for the same, then if he does not desire to accuse her, he is not guilty of sin. And the Holy Church also considered it proper that where anyone was separated from his wife on account of adultery, so that they did not have to live together, and, after this, the husband was willing to pardon her, he can do so, and they can live together and have carnal intercourse, just as if they had not been separated, but where

the husband desires to accuse her in order that she may be punished, as the secular laws direct, he can do this also before a secular judge.

If, however, the husband does not wish to bring an accusation against her, and she is unwilling to abandon her evil deeds, her nearest relatives can then accuse her, or any one of the people can do so if they refuse, for the Holy Church considered it proper for any man to bring an accusation against a woman who commits a sin of this kind; since, as all persons in general are forbidden to commit adultery, so he who is guilty of it breaks a law which applies to all. In every way above mentioned in these two laws, by which a husband can accuse his wife, she, according to the Holy Church, can also accuse him, if she desires to, and she should be heard just as he is.

LAW III.

By Reason of What Impediments a Marriage Can Be Impugned, in Order That It May Be Annulled.

Where carnal relationship or affinity within the fourth degree, is established between married persons, or where there is spiritual relationship between them, as the connection of godfather or godmother or any of the impediments on account of which they should not marry; or where they are married and the marriage should be annulled by reason of some mortal sin which exists between them; on account of any of these impediments a husband can accuse his wife, and she him in order to bring about a separation, and where they prefer to be silent, being willing to live in such sin, their relatives can accuse them. If the latter are not willing, any other members of the community can do so, for the reason we stated in the preceding law.

LAW IV.

Who Cannot Impugn a Marriage.

A person who is infamous so that his testimony should not be received or anyone who is living openly in mortal sin, where this can be proved against him, cannot bring an accusation against others for the purpose of annulling the marriage made between them; except where it rather belongs to him to do this by reason of relationship, than it does to others, because he is more nearly concerned with the evil condition growing out of the sin in which said married persons are living. Moreover, a person who questions a marriage, cannot do so, and should not be heard, when he does this with the intention of obtaining something from the parties which he accuses, and for no other reason; and a party who has already received money, or something else which has been given him to induce him to bring such an accusation, should not be heard, for an accusation made by any person of this kind should not be received, where he is proved to have brought it for a consideration.

LAW V.

For What Reasons Those Who Attempt to Impugn a Marriage, in Order to Cause It to Be Annulled, Should Not Be Heard.

When a priest announces publicly in church that certain persons desire to marry, and notifies all those present if they know of any impediment existing between them by reason of which they should not marry, to state it before a certain day which he designates, and any of those present, when this announcement is made, keeps silent at the time, being aware that an impediment of this kind exists between the parties, and afterwards desires to bring

an accusation for the purpose of annulling the marriage, after the said parties are married, he should not be heard. The same rule will apply even though he were not present when the priest made an announcement of this kind to the people; for if he learned from some one else what was said in the church, and keeps silent, knowing that such an impediment existed between them, he should not be heard after the marriage has taken place, except where he gives a lawful excuse for not hearing an announcement of this kind; as, for instance, if he was deaf at the time; or was under age; or where he did hear it, or learned it in some other way, but was ill so that he could not rise and disclose the impediment which he knew to exist between the parties. Or where he was so far from the place, that, although he did hear of it he could not arrive before the marriage ceremony was performed; or where he was silent through fear that he could not prove his statements, and after the marriage took place he obtained the evidence; or where he failed to do this because someone else had brought an accusation against them on account of the existence of an impediment by reason of which they should not marry, and before he produced the evidence, the party desisted at their request, or in consideration of something which they gave him.

The same rule applies where anyone declares that, at the time when the announcement was made and before the marriage ceremony was performed, he was not aware of the existence of the impediment concerning which he desired to accuse the parties, although he was present when it was made, but that he learned the fact subsequently. A person of this kind should be sworn as to the truth of his statements, and that he does not act maliciously, and he should afterwards be heard. He cannot be refused a hearing, although he may have ascertained the existence of the impediment which he brings forward from one of those present at the time when the announcement was made, and who was silent, not desiring to make such an accusation. Anyone of the aforesaid persons who offers an excuse of this kind should be heard, after the marriage has taken place.

LAW VI.

What Reasons Prevent the Accusation of One Who Calls a Marriage in Question from Being Heard.

Where any man, who has committed adultery, wishes to accuse his wife or some other woman of committing a sin of this kind, the woman can defend herself by stating that she desires to prove that the man himself committed a similar offence, and if she does prove it, her accusers should not be heard, according to the law of the Holy Church. Moreover, when a man accuses his wife of committing adultery, and she alleges that she desires to prove that he himself had already pardoned her for that offence, and had afterwards received her as his wife, and she proves this, her husband should not be heard; nor should the accusation of a person, who, himself, brings a wife, or is her messenger, or takes a reward, in order to enable her to commit adultery with someone, be received. Nor moreover should an accusation be received which is brought by any one who knew that some woman committed adultery, and, after the death of her husband, married her, and then wishes to accuse her of such an offence; or who, after he married her, learned that she committed adultery, and consented to it by keeping silent, and concealing it.

LAW VII.**For What Reasons a Married Woman, Who Lies With Another Man, Does Not Commit Adultery, and Cannot Be Accused of It.**

Where a man has sexual intercourse with a married woman by force, taking her by surprise so that she cannot protect herself from him, if the act is performed in this manner she does not commit adultery, and cannot be accused of it. Moreover, a woman with whom another man lies cannot be accused if she thinks that it was her husband who was with her. This would be the case where a husband leaves his wife's bed at night for some purpose, and another person who was sleeping in the house, goes to her and she receives him, thinking that it is her husband; for when he lies with her in this way she cannot be accused of committing adultery, except where she was cognizant in some way of this wickedness or where she acted maliciously by giving her consent afterwards, knowing that it was not her husband.

LAW VIII.**What Circumstances Excuse Women So That Their Husbands Cannot Accuse Them of Adultery.**

Where a married man leaves his country to join the army or perform a pilgrimage, or to go to some other place distant from his country, and happens to be delayed there for a long time, so that persons make his wife believe that he is dead, and she marries another man; when she marries under such circumstances she cannot be accused of committing adultery, even though her first husband may be living, for her ignorance excuses her. But if after she had married her second husband she should ascertain positively that her first husband was living, and should remain with her second husband, or have carnal intercourse with him, and this should be proved, she can be accused.

Moreover, a person who becomes a heretic, a Moor, or a Jew, cannot accuse his wife of adultery, and this is the rule for the reason that he himself committed adultery spiritually. Wherefore, since the accusation of a person who committed adultery carnally can be rejected, much more readily can this be done in the case of a person who committed it spiritually, by changing his religion and persisting in his wickedness. Under other circumstances a woman cannot be accused of adultery, as, for instance, where a Jew had married a woman and separated from her, as directed by the Jewish law, by giving her a statement of repudiation, and after this becomes a Christian, and she marries another Jew. If, however, while she is still married to her second husband she should desire to become a Christian, and to claim as her husband the man to whom she was married in the first place and who became a Christian before he married another woman, she can do so; and he must receive her, and he cannot accuse her of adultery, nor can he reject her, or refuse to receive her for this reason.

LAW IX.**In How Many Ways Accusations Can Be Brought for the Purpose of Annuling a Marriage.**

An accusation for the purpose of annulling a marriage can be made in two ways. The party who does this can make it simply in the form of a complaint or a request, as stated in the second law of this Title, or he can do it in another way, by bringing an accusation and binding himself by a penalty, as directed by the secular laws. An accusation which is made simply, is divided into

two kinds. The party can either make it by reason of some impediment by which the marriage will be annulled for all time, as, for instance, on account of the parties being relatives, or because of some of the other impediments for which a marriage should be annulled; or he can make the application on account of some impediment which should only cause a separation and prevent the parties living together, or having carnal intercourse, as, for instance, the sin of adultery, and we shall show how the accusation should be made with respect to each of these ways and each of these impediments.

LAW X.

In What Way a Wife Can Complain of her Husband, and the Husband of His Wife, in Order to Obtain a Separation by Reason of Some Impediment Existing Between Them.

When a wife complains of her husband, on account of his being of a cold disposition, or impotent, she should file her application in writing, or state it orally, making said complaint simply in the following manner, before one of the judges of the Holy Church, alleging specifically that she complains of her husband because he cannot have intercourse with her, and asks to be separated from him and that permission be given her, to marry someone else, as she desires to have children. It is stated above that a complaint of this kind should be made simply, because the party who makes it is not required to include in her application, either the era, the month, or the day on which it is filed, as is necessary in other documents containing accusations. A husband can complain of his wife in the same way, where an impediment exists in her which prevents him from having sexual intercourse with her.

LAW XI.

In What Way the Paper Containing the Accusation Should Be Drawn for the Purpose of Annulling a Marriage, by Reason of the Existence of Some Impediment.

The paper containing the accusation for the perpetual annulment of a marriage, should be drawn up in the following manner. When it happens that anyone, thinking that he, himself, is living in sin, desires to call his marriage in question, he should appear before one of the judges of the Holy Church and reduce his accusation to writing as follows, stating that the woman to whom he is married is his relative; setting forth specifically in what degree, mentioning some of the persons on both sides from whom they are descended; and saying that he desires to prove that they are so nearly related that the marriage should be annulled, and that he asks for a separation. Where the husband and wife are unwilling to accuse one another, desiring to live in sin, anyone of those persons who have power to call the marriage in question, as stated in the laws of this Title, may bring an accusation for the purpose of separating the parties, and they should include in said application everything mentioned in this law which applies to persons who call their own marriage in question. All other applications in writing which any persons desire to file for the purpose of annulling a marriage, by reason of impediments arising from affinity, spiritual relationship, or adoption, should be drawn in the manner aforesaid.

LAW XII.

**What a Petition Is, How It Should Be Drawn When a Person Simply
Impugns a Marriage for the Purpose of Having it Annulled on
Account of Adultery.**

We have mentioned a petition many times in preceding laws, and therefore we desire to explain what it is, and we declare that a petition means a paper in which a man writes his accusation. Where anyone desires to simply make an accusation on account of adultery, for the purpose of separating persons who are married, so that they may not live together or have carnal intercourse, he should draw up the paper in the following way, namely; by the husband making complaint against his wife, before some of the judges of the Holy Church, mentioning his name and that of his wife whom he accuses of committing adultery with some man, designating the latter by name. He should also mention the city, town, or community where this was done, and if the act was committed in an inhabited locality, he should state in what house, and in what part of it, and in what month, but he is not required to mention the hour, or the day, on which the adultery was committed, if he does not desire to do so. He should state, in addition to this, that he desires to prove his allegations, and ask to be separated from her, and that she be ordered to return whatever he gave her on account of the marriage. He should also state the era, the month, and the day, on which the petition was drawn, and who was king or prince in that country at the time, and he should name the prelate of that locality. An accusation of this kind can be made by an attorney in case there is urgent necessity for it, and some impediment exists on account of which the party cannot make it himself.

LAW XIII.

**Under What Circumstances a Party Who Impugns a Marriage on Account of
Adultery, Should Be Bound by the Penalty of Retaliation,
and When He Should Not.**

A party who brings an accusation against his wife, with reference to a separation on account of adultery, as stated in the preceding law, should not be subject to the penalty of retaliation. This is the case because, although he may not prove the fact of adultery, he obtains his wish for a separation from her, just as if he had proved it. But if he makes the accusation against her under a penalty, as the secular *fuero* directs, then he should be subject to the penalty of retaliation; which means that he is bound to suffer the same penalty that would have been inflicted upon his wife if he had proved the adultery of which he accuses her. The petition of an accusation of this kind should be drawn in the way stated in the preceding law, when an accusation is brought against a woman for a separation, in order that she may not live with her husband, or have carnal intercourse with him, and it should also be stated therein that he is bound by the penalty aforesaid. In any of the ways above mentioned in this law—and in those of the former one—in which a husband can accuse his wife, she can also accuse him, if it is necessary. For in all accusations of this description the husband and the wife should be judged alike, as the Holy Church directs. However, equality of this kind should not be at all considered by a secular judge, according to the laws of the wise men of the ancients, as is explained in the Seventh Book in the Title on Adultery.

LAW XIV.**A Petition Which Is Improperly Drawn Should Not Be Received.**

When anyone draws up a petition improperly, in order to accuse a woman of adultery, whether this is done for the purpose of separation, or for the infliction of punishment according to the secular *fuero*, such a petition should not be received or the woman found guilty on account of such an accusation; where, however, it is afterwards amended and is properly drawn, as stated by the laws of this Title, it should be received and the accusation of the party heard. Moreover, when several persons impugn a marriage, not all of them should be heard but they themselves should choose one of their number, whoever they think proper to make the accusation, and he, and no one else, should file the petition and be heard; and, if he loses the case, no one else should be heard with regard to said adultery. According to the secular *fuero* no one can bring an accusation of adultery for the purpose of having punishment inflicted, by any letters which may be sent, but the party should appear in-person before the judge, and make said accusation by filing a petition, as above stated.

LAW XV.**What Persons Can Testify for the Purpose of Annulling a Marriage or to Confirm It.**

Any man who is of good reputation can testify in a suit brought for the purpose of annulling a marriage by reason of relationship or affinity within the fourth degree. And, for the reason that some persons have been in doubt whether relatives can be introduced to give testimony in a case of this kind, the Holy Church deemed it proper to settle this, and direct that if a wife accuses her husband, or a husband his wife, because they are relatives or connected by affinity, within the fourth degree, as aforesaid; the relatives of the husband as well as of the wife can be accepted as witnesses for the purpose of annulling said marriage. And the Holy Church also considered it proper that these witnesses should be accepted rather than others because they are more familiar with the relationship than any other can be, and exert themselves to the utmost of their power to ascertain their descent. It is also the case that the testimony of the witnesses aforesaid, preferably to that of any others, should be accepted, for the purpose of annulling such a marriage, where a relative of the married persons, or any other stranger whosoever, makes the accusation. Whatever is stated in the above law to be requisite in marriages already contracted should also be observed with regard to those who desire to marry, by any person announcing that an impediment, as above mentioned, exists between them.

LAW XVI.**In What Way Those Who Bring Suit Concerning a Marriage Contract Can Introduce Their Own Relatives as Witnesses, and When They Cannot.**

When a woman denies in court that she agreed to marry a man who claims her as his wife, and the said party is able to prove this, he can introduce the evidence of his own relatives, along with that of others, or he can call her relatives alone, or any other persons of good reputation. Where, however, the party who claims the woman as his wife is not as rich, or of as high rank, or as powerful, or of as good family as she, he cannot bring his relatives to testify because they may be suspected of desiring to increase the honor and profit of their kinsman; but if they are equal in the matters aforesaid the

party who claims the woman as his wife has a right to introduce his own relatives along with hers, and with other strangers, for the purpose of giving their testimony. And where a woman claims some man as her husband, and he denies this, she can introduce testimony against him in the same manner.

LAW XVII.

In What Way the Relatives of Parties Who Desire to Marry Can Testify.

Where announcement is publicly made that certain persons desire to marry, as stated in the law of this Title which begins; "When a priest announces publicly;" and anyone declares at the time that an impediment of relationship exists between them, on account of which they should not be married, under such circumstances the relatives of the parties who desire to marry can testify; for if they state in their testimony that the parties were not related in such a way as to prevent the marriage from taking place, by reckoning some of the degrees on both sides and by swearing that this was the truth, their evidence will be competent, and the marriage should not fail to be contracted.

If, however, after the marriage ceremony has already been performed, any person should desire to impugn said marriage by reason of consanguinity, and they prove this by others who were not related to the persons who were married, the marriage should be annulled; except where the said relatives themselves give their evidence in the case, or others of the same family testify again with regard to the same accusation that no such impediment as that alleged exists between them; for where they testify in this way, not deviating from their previous statements, and were more in number and of better standing than those who stated the contrary, or were equal in number and just as reliable; the testimony of the said relatives, and not that of the other parties should prevail, and the marriage should not be annulled. The reason why these witnesses can be introduced a second time in a suit in which they have already testified is because the claim was changed, for in the first place, they testified concerning the announcement, and subsequently concerning the accusation.

LAW XVIII.

What Betrothals Are Easily Prevented by the Testimony of Relatives.

Betrothals made by words relating to future time, when they are not confirmed by oath, are easily prevented, for if the father or the mother of either of the betrothed parties, or any other near relative should declare, or it should be commonly reported in the neighborhood that such an impediment existed between the parties that they could not marry, the marriage should not be celebrated; and this is the case because the Holy Church considered it proper, in an instance of this kind, that the testimony of one reliable man or woman concerning the report in that neighborhood should be sufficient to prevent a marriage. But where a betrothal of this description was confirmed by oath, none of the persons aforesaid should be believed in opposition to it, but the evidence of one of them combined with that of another, or with the common report of the neighborhood will be sufficient. Where, however, the marriage has been concluded it cannot be annulled, except where the party who impugns it proves the existence of the impediment by as many and such witnesses as are necessary for the purpose. What is stated in this law is proved to be correct by a rule which establishes the fact that there are many things which prevent marriage before it is contracted, which cannot annul it afterwards.

LAW XIX.**What Kind of Persons the Witnesses Should Be Who Are Called for the Purpose of Annulling a Marriage, and in What Way They Should Be Sworn.**

Witnesses who testify for the purpose of causing a marriage to be annulled, by reason of any impediment, should be persons without mortal sin to whom no other evil suspicion attaches. And before they give their testimony the judge should swear them on the Holy Gospels, or in his hands, where he is a bishop or a priest qualified to say mass, in the following manner, namely; "You swear to God and to Holy Mary, and to me, on these Holy Gospels, that concerning the relationship, (or some other impediment) said to exist between Such-and-Such a man and Such-and-Such a woman (mentioning each one of them by name), and with regard to which impediment it is sought to annul the marriage existing between said parties, you will tell the truth of what you know, whether you have ascertained it by sight, or from the statements of your superiors in rank or from those of others; and that you will tell nothing but the truth, uninfluenced by love or hate, or by any gift you have received, or expect to receive, or by fear, or by anything else whatever; and that the allegations of your testimony with respect to these matters you do believe to be true." They should reply that they do swear to this, and the judge should say that if they do so, may God help them, and, if not, may He confound them; and they should answer, "Amen."

LAW XX.**Those Who Give Hearsay Testimony Should Not Be Believed.**

Where witnesses have been solemnly asked, as stated in the preceding law, whether the impediment concerning which they appear in court for the purpose of annulling a marriage arises from relationship, and they say that what they testify to they know by hearsay, they should not be believed; nor is their testimony competent unless they declare that they have seen, or known certain persons within the said prohibited degrees, as reckoned, for which reason they testified that the parties who were married were descended from the same family and desired to separate. It is also necessary that they give the names of those persons whom they said that they saw and knew, and that they state particularly in what degree they are related to those who wish to separate.

There is another reason why the testimony of a person who states that he knows a fact from hearsay should not be sufficient. For if he says that he heard it from one man alone, and no more, he should not be believed, although he may say that he heard it before the suit was begun; and even if he states that he heard it from several persons after the suit was begun and that he did not know it before, in this case also his testimony will not be sufficient, for the reason that he may be suspected of having been cajoled or requested by one of the parties. The same rule will apply if he alleges that he obtained his information from men of bad reputation, or from any others who were enemies of, or had a grudge against, the parties; or who are such persons that if they themselves appeared to testify their evidence would not be received.

TITLE X.

Concerning the Annulment of Marriages.

Where any of the impediments mentioned in the preceding Title arises, on account of which a marriage made between certain parties should be annulled; after the complaint and accusation have been made and the impediment proved, as stated in the preceding Title, the marriage should be annulled by a decree of the Holy Church, except where the impediment relates to something connected with the secular courts, as, for instance, to adultery. And since, in the preceding Titles we have spoken of the impediments for which marriages should be annulled, and of the way in which accusations should be made, it is proper that we speak in this Title of the annulling of marriage, called, in Latin, *divortium*. We shall show whence it derived this name; for what reason a separation can be made between husband and wife; who has authority to render the decision; and in what way it should be rendered.

LAW I.

What Divorce Is, and Whence it Derived This Name.

Divortium, in Latin, means separation, in Castilian. This is something which separates a wife from her husband and a husband from his wife, on account of some impediment that exists between them, when it is proved according to law in court. Whoever does this in any other way, separating the parties by force or contrary to law, acts in opposition to what Our Lord Jesus Christ said in the Gospel; namely, "Those whom God has joined together let no man put asunder." But where they are legally separated, it is not understood then that man separates them but the written law and the impediment that exists between them. Divorce derived its name from the separation of the wills of the man and woman, which in said separation are the opposite of what they were when they were united.

LAW II.

For What Reasons a Separation Can Be Made Between Man and Wife.

Properly speaking, there are two reasons, and two kinds of separation implied by this term divorce, although there are several reasons for which those who appear to be married, and are not, can be separated on account of some impediment which exists between them. Of the two reasons aforesaid one is religion, and the other the sin of fornication. By religion a divorce is effected in the following manner. Where persons are lawfully married, and none of the impediments on account of which the marriage should be annulled exist between them, and either of them, after they have been carnally united, voluntarily decides to enter a religious order, and the other gives consent; the one who remains in the world promising to preserve his or her chastity, and being so old that no suspicion can arise, against him or her that they will commit the sin of fornication, and the other party enters the order, in this way the separation is made so as to be properly called a divorce. This, however, should be done by command of the bishop or by that of some of the other prelates of the Holy Church who have authority to issue a command. Moreover, if the wife commits the sin of fornication or adultery against her husband, this is the second reason which we mentioned for which divorce can properly take place; the accusation having been brought before a Judge of the Holy Church, and the fornication or adultery having been proved, as stated in the preceding Title.

The same rule applies to a person who commits fornication spiritually, by turning heretic, Moor, or Jew, if he is not willing to make amends for his wickedness. The reason why the separation which is effected on account of one of these two things, namely religion and fornication, is properly called divorce rather than the separation which takes place by reason of other impediments, is because, although the parties who were married are separated, as stated in this and the preceding law, the marriage always remains in force so that neither of them can marry as long as he or she lives, except in the separation made by reason of adultery, for in that case the survivor can marry after the other is dead.

LAW III.

For What Reasons a Party Who Becomes a Christian Can Separate From the Wife, or Husband, to Whom He Was Formerly Married According to the Rights of His Religion.

Contumelia Creatoris, which means contempt of God and our religion, is a kind of spiritual fornication by means of which a divorce may take place between persons who are married. This would be the case where persons who are Moors or Jews are married according to their religion, and one of them becomes a Christian, and the other, desiring to adhere to his or her religion, is not willing to live with the former, or, if willing, frequently manifests in his or her presence, contempt of God and our faith, or quarrels with his or her spouse every day while trying to persuade him or her to abandon the faith of the Christians, and return to that which he or she has renounced. For, on account of any of these three reasons, a Christian man or woman can leave wife or husband, without asking permission of anyone, and marry someone else, if he or she desires to do so. But before one party separates from the other he should call together some reliable men, and communicate the facts to them, by explaining to them the impediment on account of which he desires to leave his wife. Those whom he summons for this purpose must hear what he has to say and be certain of it, in order that he may be able afterwards to prove it by them, if it should become necessary.

LAW IV.

What Distinction Exists Between Marriages Contracted by Christians and Those Made by Other Persons Acknowledging a Different Religion.

Initiatum, ratum, consummatum, means in Latin, something which has a beginning, stability, and completion. These three things exist in a marriage lawfully contracted between Christians, but they are not found in other marriages celebrated according to the rites of other religions, for in other marriages contracted between persons who are not Christians only two of the things aforesaid exist, which are the beginning and the conclusion, but not the second, that is to say, affirmation; and for this reason a distinction exists between marriages which Christians contract, and those of other religions. For, as the Holy Church commands, a marriage is never destroyed, provided it is lawfully contracted, although a divorce may take place, for it always endures during the lives of the parties who contract it, and neither of them can ever marry as long as the other is living. But a separation takes place in other marriages, celebrated according to the rites of other religions, as, for instance, by a writing of repudiation or divorce, or for any other reason stated in the preceding law, so that while one party is living the other can marry.

LAW V.

In What Way Many Marriages Have a Beginning, Stability, and Completion.

Marriages have their beginning in betrothals by words relating to the future or the present time, the parties who are betrothed to each other giving their consent, according to law. However, in a betrothal made by words relating to the present time, such stability exists that those affianced in this manner cannot be separated excepting in one way, that is, when one of them enters a religious order before they have carnal union, as stated in the Title concerning Marriages. A marriage receives stability and completion when the husband and wife are carnally united, so that it always remains stable, even though the parties may be separated on account of adultery, as stated in the law which begins "Properly speaking."

LAW VI.

Concerning Husbands Who Commit Fornication, After They Are Separated by a Decree of Court from Their Wives on Account of Adultery.

Where any man accuses his wife of committing adultery and proves it, as stated in the preceding Title, and a decree of divorce is rendered against her; and, after this the husband commits fornication with another woman; the wife, in a case of this kind, can demand that he return to her, and the church should compel him to do so, and he cannot avoid it by alleging that they were separated by a decree of the Holy Church. This is the rule because he, having committed a similar sin to that of his wife, is understood to have renounced the decree rendered in his favor.

LAW VII.

Who Can Render a Decree of Matrimonial Separation, and in What Way This Can Be Done.

A decree of divorce, separating husband and wife, should be pronounced or rendered by the archbishops or bishops, to whose jurisdiction those who are separated belong. This is the case because a suit for matrimonial separation is very serious, and difficult to decide. For this reason a suit of this kind, and also all other important spiritual ones should rather be decided by bishops than by other and inferior prelates, because they are, or should be, better qualified to decide them with greater justice. Where, however, it is a custom in certain localities that has been practiced for forty years, for archdeacons or archpriests, or other prelates inferior in rank to bishops, to decide such cases, they have authority to do so. This is understood to refer to such as are educated and learned in the law, and so accustomed to suits that they know how to act without committing errors; and the same rule applies where the Pope grants permission by his privilege to any persons to decide suits of this kind. A decree of matrimonial separation should be rendered in the same way as other final judgments are, as we showed in the Third Partida of this book, in the Title treating of how decisions should be given.¹

¹ The Twelve Tables authorized a husband to dissolve the marriage tie at will, provided he stated publicly his reason for doing so. "*Si vir ab se uxorem suam diuertere, ac matrimonium dissolvere velit: facti rationem, et quare coniugem dimittat causam dicito unam.*" (Leg. XII Tab. VI-X). A law promulgated by Romulus gave a husband authority to repudiate his wife for only three reasons: adultery, the making of false keys, and the preparation of poison. The second of these undoubtedly embraces all violations of confidence; the last has special reference to the favorite means for the perpetration of murder by women in all ages. The legislation of the Empire enlarged this power to an almost indefinite extent. By the Code of Justinian permanent separation between husband and wife could be accomplished without any cause, and merely by common consent. "*Si constante matrimonio communi consensu tam mariti quam mulieris repudium sit missum, quo nulla causa continetur, licebit mulieri non quinquennium exspectare.*" (Corp. Jur.

LAW VIII.

For What Reasons a Suit for Matrimonial Separation Should Not Be Placed in the Hands of Arbitrators.

Persons in whose hands men agree to place a suit to be decided according to their judgment by imposing a penalty upon the parties are called arbitri, in Latin. The Holy Church forbids that a suit for matrimonial separation should be placed in the hands of such persons, whether they are priests or laymen, and not even if they are bishops. There are two reasons for this. First, because every suit placed in the hands of arbitrators cannot be terminated except with fear of a penalty, and this should not be imposed in a case relating to marriage, for marriage should be free and exempt from every kind of compulsion, and therefore arbitrators should not decide a case of this kind. The other reason is because matrimony is spiritual, and was first established by Our Lord God, as stated in the Title concerning Marriages; hence a case of this kind cannot be decided by anyone but those who occupy in the church the place of Our Lord Jesus Christ in the Church, and have jurisdiction to do so.

Civ. Cod. V-XVII-9.) The exercise of magisterial authority was not necessary under these circumstances, but public notice of divorce was ordinarily given, although even this was not imperative.

The canon law, which regarded marriage as a sacrament, and therefore indissoluble, has never permitted absolute divorce, even for adultery. This doctrine was theoretically abolished at the Reformation in England, though its hold upon the public mind was such that, until comparatively recent times, a divorce *a vinculo matrimonii* was rare, and, except in case of established canonical disability, unattainable, unless by an Act of Parliament. Adultery is the principal cause of divorce recognized by English jurisprudence and in this instance it particularly favors the husband. Desertion alone, as well as the innumerable statutory provisions of the various states of the Union authorizing the severance of matrimonial bonds is unknown to the laws of England.

Willful absence for four years, and adultery are the two causes of divorce in Scotland, where the husband and wife are upon the same footing, as far as their legal rights in this respect are concerned.

In Spain, where canonical marriage is indispensable, divorce, though it may be obtained through a civil tribunal, is governed by the regulations of the church, and is never absolute. Its effects are the separation of the parties; the possession of the children by the one who is innocent; the partition of goods held in common; and the retention by the innocent husband of the control of the wife's property out of which she is solely entitled to necessary maintenance. (Cod. Civ. de Esp. IV-V-Art. 75.)

Italy, likewise, is still dominated by the rules of the canon law, and death can only produce a complete and permanent rupture of marital ties. Adultery, voluntary desertion, and extreme cruelty manifested by fits of rage, threats, and serious injuries, are the legal grounds for separation. A wife can also apply to the court when her husband refuses to provide for her in a manner suitable to her social position, when he has the means to do so. The provisions as to the rights of the injured party, for the most part, coincide with those of the Spanish Code. Every encouragement is given to induce a reconciliation. (Civ. Cod. d' Ital. I-V. Art. 148-158.)

The French law admits of absolute divorce in cases of adultery, extreme cruelty, or the conviction of either party of an infamous crime. Where good grounds for divorce exist the parties may agree upon, and make a demand for, a separation corresponding to that of a *mensa et thoro* of the English law. When the defendant, after having been duly served with notice, does not answer, a decree can be taken by default. If the parties re-marry, no subsequent application for a divorce will be entertained, except where one of them has been convicted of an infamous crime. The woman cannot marry again until after three hundred days have elapsed, to protect the rights of an unborn child. (Cod. Civ. de Fr. I-VI. Art. 229-311.)

Divorce is not mentioned in the Gentoo Code, but a husband was granted the right to drive his wife from his house if she was wasteful, vicious, disobedient or quarrelsome. (Gent. Cod. XX.)

The Koran confers upon the husband the largest conceivable liberty in the matter of divorce, the mere pronouncement of a formula severs the marriage tie. He can re-marry his wife twice, but not a third time until she had been divorced by a second husband; and he cannot deprive her of any property which she may have received from him. (Sura. II-75.) Despite their alleged divine origin, the regulations of Mohammed have been considerably modified in deference to the more equitable ideas of modern times, and especially is this the case in India.

The matter of divorce is becoming a very serious and important one in this country. The absurd idea that marriage is a sacrament, a doctrine promulgated during the dark ages to increase the authority and sanction the interference of the church, a belief which modern society has long since outgrown, is largely responsible for the present deplorable scandals daily served up for public delectation by the press, and whose pernicious effect upon the peace and enjoyment of domestic life cannot be estimated. In this country the laws of the states relative to this subject vary greatly. South Carolina being the only one where divorce is not permitted under any circumstances. The old Roman law which considered it as a right, whenever it was ascertained that matrimony had failed of its object, was far more rational and just than the periodically recurrent, organized efforts of fanatics to render the permanent separation of husband and wife impossible. The activity of our divorce courts, and the disclosures by the recent census which shows that more than one marriage in ten is followed by a divorce, is a significant protest of society against prevalent conditions, which are contrary to strict justice, common decency, physiological requirements, and natural law. Marriage is the only civil contract entered into with the consent of both parties which cannot be repudiated when found to result in their injury, and where a well-grounded presumption of collusion invalidates the legal proceedings to abrogate it. It is the height of cruelty to compel persons unfitted for intimate association with one another to live together in constant suffering and unhappiness without the prospect of redress or relief. The right of individual liberty is flagrantly violated by our statutes regulating divorce, for which there seems at present little prospect of amendment.—Ed.

TITLE XI.

Concerning Dowries, Donations, and Marriage Gifts.

Husband and wife give to one another, when they marry, dowries, donations, and marriage gifts. These were established in the beginning in order that those who marry might have something to live upon, and be able to maintain and preserve their marriage well and faithfully. And for the reason that these dowries, donations, and marriage gifts aforesaid, are sometimes given at betrothals, and sometimes after marriages have been contracted, and also because, although consent may be granted they are not secure if a separation afterwards takes place; for all these reasons it is proper that we should speak, in the first place, of marriage and of the impediments on account of which the parties ought to be separated. This is the case because dowries, donations, and marriage gifts are gained and lost when a separation occurs.

Wherefore, since in the preceding Titles we treated of marriages and everything relating to them, not only for the purpose of contracting them but also for their disunion, it is proper that we treat here of dowries, donations, and marriage gifts. First we shall describe what a dowry, a donation, and a gift made on account of marriage are: at what time they can be given; how many kinds there are; who can give them and how, and out of what property; and who acquires the benefit, or suffers the loss from property given in any of the ways we have mentioned, when they are increased or diminished, or lost by a decision of court. Also, for what reason a husband obtains the dowry given him by his wife, or she the donation which her husband gave her on account of marriage; whether a wife, during the continuance of the marriage, can claim the dowry which she gave her husband; to whom it should be given if she dies, and when this should be done; and what expense a husband is entitled to when he surrenders the dowry.

LAW I.

What a Dowry, a Donation, and a Marriage Gift Are, and at What Time They Can Be Given.

The property which a wife gives to her husband, by reason of marriage is called a dowry, and it is, as it were, a kind of donation made with the understanding that the marriage is to be maintained and united by means of it, and, as the wise men of the ancients stated, it is, in fact, the private property of the wife. Whatever the man gives to the woman on account of marriage, is called, in Latin, *donatio propter nuptias*, which means a donation given by the man to the woman in consideration of his marriage to her, and a donation of this kind is properly called in Spain a marriage gift. But, according to the laws of the wise men of the ancients, this expression "marriage gift" has another signification, because it means, as it were, a pledge, given between the parties in order that the marriage which they have promised to contract, may be consummated, but where the marriage was not consummated that the pledge should remain in the possession of the party who kept the promise which he made, and the other party who did not keep what she had promised should lose it; for although a penalty imposed in a matrimonial contract is void, a pledge, marriage gift, or agreement, made under such circumstances will be valid. Pledges of this kind were formerly given in marriage contracts which were to be carried out. Dowries and donations made by the husband to the wife, and by the wife to the husband, as we stated above, can be given before the marriage has been consummated, or afterwards. These should be made by both parties, except where a custom has been practiced for a long period in

certain localities authorizing them to be made in another way. If, after the marriage has been concluded, the husband desires to increase the donation to his wife, or the wife to increase the dowry to her husband, both can do so on equal terms, as above stated.¹

LAW II.

How Many Kinds of Dowries, Donations, and Marriage Gifts There Are.

Adventitia et profectitia meant, in Latin, two kinds of dowry, and that is called *adventitia* which a wife gives to her husband, out of her own property or whatever her mother gives for her, or any of her relatives who are not in the direct ascending or descending line but who belong to the other lines, as, for instance, what an uncle, a cousin, or any other relative whosoever, or a stranger gives. This is called *adventitia* because it is derived from the gains which a woman acquires through herself, or from some gift which is made to her which is obtained from another source and not from that of the property of her father or grandfather, or other relatives in the direct line from which she is descended.

The other kind of dowry, called *profectitia*, is so called because it is derived from the property of the father, grandfather, or other relatives in the direct ascending line, but where a father owes anything to his daughter, and gives it under her direction to her husband as her dowry; and although the father pays a dowry of this kind out of his own property, it should not, for this reason, be called *profectitia* but *adventitia*, because he does not give it in this way as her father, but as any stranger might do. The same rule applies where some one else presents anything to the father to be given as a dowry to the daughter, which although the father gives it to the husband of his daughter, is not *profectitia* but *adventitia*. We also declare there are two kinds of donations and marriage gifts. First, the one which the husband gives to his wife, on account of the dowry which he received from her, as we have above stated. Second, the one which a man gives unconditionally to his wife, which is called, in Latin, *sponsalitia largitas*, meaning the gift of a husband, and this gift is made before the marriage has been completed, by words relating to the present time. There is another kind of donation which the husband makes to the wife and the wife to the husband, after the marriage has been completed, but a donation of this kind is forbidden by the laws to be made. The nature of each of these donations is explained in the laws of this Title.

LAW III.

Concerning a Donation Made by a Man to His Wife, or by Her to Him, as, for Instance, of Jewels, or Other Property.

Sponsalitia largitas, in Latin, means, in Castilian, a gift which a man makes to his wife, or which she makes to him, freely and without conditions, before the marriage contract has been concluded by words relating to the present time. And although a gift of this kind is made unconditionally, it is, never-

¹ The meaning of the word *dos*, under the Roman legal system, was exactly the opposite to what is now understood by "dower" in Anglo-Saxon jurisprudence. The rules laid down in the text, together with various distinctions and exemptions therein set forth, are borrowed from the Civil Law. None of them are to be found in the Twelve Tables, and they were unknown to the polity of ancient Rome. The *dos* was formerly considered indispensable to the nuptials, as is declared by the Visigothic Code. "*Nam ubi dos nec data est, nec confirmata, quod testimonium esse poterit in coniugii dignitate futura?*" (For. Jud. III-1-1.)

This is not necessary under the Mohammedan rule. "A marriage is valid, although no mention be made of the dower by the contracting parties . . . The payment of dower is enjoined by the law merely as a token of respect for its object (the woman)." (The Hedaya II-3.) The Visigothic Code did not allow the bridegroom to dispose of more than one-tenth of his property in this manner; no limit whatever to the amount is fixed by the Moslem law, except that it must not be less than ten *dirhems* (equivalent to \$1.60).

According to the *fueros* of Castile, a nobleman could bestow upon his wife one-third of his real estate, to be held by her during her life or good behavior, with the consent of his heirs. If the said heirs did not consent, however, they could pay the widow fifty *suelos*, and take possession of the property. (*El Fuero Viejo de Castilla* V-1.)—Ed.

theless, always understood that the party who receives it ought to return it, if through his or her fault, the marriage should not be consummated. But if it should not happen to be consummated on account of the death of either of the parties beforehand, in a case of this kind it is disposed of as follows:

If the man who made the gift should die before he embraces his wife, the property included in a gift of this description should be returned to the heirs of the deceased. If he has embraced her, only half of said property should be returned, and his wife should retain the other half. Where the wife made a gift to her husband, which is something that rarely happens, because women are naturally greedy and avaricious, and she dies before the marriage has been concluded, in a case of this kind, whether they have embraced one another or not, the property which was given should be returned to the heirs of the woman. The reason which induced the wise men of the ancients to decide differently with regard to gifts of this kind, is because the wife gives the embrace to her husband, and it is not understood that she receives it from him; moreover, when he receives the embrace the man derives pleasure from it and is happy, and the woman is ashamed.

LAW IV.

Donations Made by Husband and Wife to One Another, After the Consummation of the Marriage, Are Not Valid, and in What Way They Can Be Abrogated.

The husband sometimes gives the wife presents during marriage, and she gives others to him, not as a matrimonial consideration but through the affection which they have for one another. Donations of this kind are forbidden to be made in order that the parties may not, through mutual affection, be deceived into depriving one another of their property, and because the one who is parsimonious would be in better circumstances than the one who is liberal in giving. Wherefore, if the parties make such gifts after the marriage is consummated, they will not be valid if one person is made richer by this means and the other poorer; except where the party who makes a donation of this kind never revokes or abrogates it during his lifetime; for under these circumstances it would be valid. But where a party who makes a donation revokes it during his lifetime, speaking specifically as follows: "I do not wish that such-and-such a donation which I made to my wife be considered valid;" or where he is silent and does not say anything; or subsequently bestows the gift upon another; or where the party who receives the donation dies before the one who made it; for any reason of this kind the donation will be abrogated.

LAW V.

For What Reasons the Donations Made by Husband and Wife to One Another Are Valid.

There are instances and reasons for which a gift made by a husband to his wife, or by a wife to her husband during marriage, is valid, and this may occur in two ways; first, when the party who makes the donation does not become any poorer on that account, and the one to whom it is given becomes more wealthy, and this would be the case where a man or woman makes some married man his or her heir, saying as follows: "I make Such-and-Such a man (naming him) my heir, and I direct that, when he dies, the property which I give him descend to his wife;" for if the husband of the woman, before he comes into possession of said property, should give it to his wife, a donation of this kind will be valid. This is the rule because he will not be any poorer

on this account, since he has not yet obtained possession of the said property, and his own which he previously held is in no way diminished.

The same rule applies where any person, by will, leaves a husband any property, as, for instance, a house, a vineyard, or a tract of land in the manner aforesaid, and afterwards he gives it to his wife before he has obtained possession of it. The case is similar where a husband gives his wife something which is not his, for such a donation will be valid, so far as to enable the wife to obtain it by lapse of time. The rule is the same establishing the validity of a donation made in any other way like these by husband and wife to one another.

LAW VI.

Of What Kind of Property Husband and Wife Can Make Donations to One Another, Although the Marriage Has Been Consummated.

When the party who makes a donation becomes poorer on account of it, and the one to whom it is given does not become any more wealthy in consequence; is the second reason which we mentioned in the preceding law for which a donation made by a husband and wife to one another during marriage will be valid. This would be the case where one of them told the other that he gave her a tomb of his in which she could be buried; or gave her, or bought for her a place on which this could be done; or gave her land on which she could build a church or monastery; or gave her the income of some real-estate, or money, or other property for her to bestow in order to light some church. Donations of this kind, or others similar to them, will be valid, since the party to whom they are given obtains no benefit from them in her lifetime because they are given in a way to redound to the service of God.

LAW VII.

Donations and Dowries, Made in Consideration of Marriage Should Remain Under Control of the Husband, to Be Kept and Taken Care Of.

A husband should place his wife in possession of the gift which he makes her, and the wife should do the same thing with her husband with regard to the dowry she gives; and, although each of them places the other in possession of their respective gifts, nevertheless, the husband should be the master and have control of all the property aforesaid, and be entitled to collect the income of the whole, including what the wife gives, as well as that given by him, for the purpose of supporting himself, his wife, and his family, and to preserve, defend, and protect the marriage well and faithfully.¹ Still, the husband has

¹ The terms dower and dowry, originally synonymous and interchangeable, meant simply the price of the bride, a custom of all barbarous races, and among them the Germans (as is mentioned by Tacitus) "*Dotem non uxor marito sed uxori maritus offert*"; (De. Ger. XVIII), whose conquest established it in Western Europe; and the right of the wife and children to a portion of the estate of an ancestor, referred to in Magna Charta, would seem to be the origin of dower in England, but the latter is, in fact, much more ancient, being attributed by eminent authority to the gift presented to the bride at the church door, the *dos nominata*, which could not exceed one-third of the lands of the bridegroom. No claim to the latter could be made unless the marriage was celebrated *ad ostium ecclesie*, another indication of the importance and incessant interference of the clergy in every affair of mediæval life. The phrase, "With all my worldly goods I thee endow," still retained in the marriage service of certain churches, and by which some ignorant and foolish women think they acquire a right to all their husbands' property, real and personal, originally merely referred to a third of such lands as the bridegroom might designate.

At common law the woman could not be endowed of the goods of her husband, but could be of both the villans in gross and villans regardant, the latter of whom only were attached to the glebe, and could not be separated from it. She was not entitled to dower where she was under nine years of age, but, on the other hand, the fact that she was so far advanced that she could not possibly have issue was no bar to the exercise of her rights. (Danvers Abridg. II-652-654.) The principle of marriage by purchase was always recognized by the common law in its extraordinary solicitude for the maintenance of the claim of the wife to a portion of the property of her husband. "*Doti lex favet; præmium pudoris est, ideo paratur.*" There was apparently no limit to the age of the husband in those days. "If the wife be past the age of nine years at the time of death of the husband, she shall be endowed, or what age soever her husband be, albeit he were but four years old. Wherein it is to be observed that albeit a woman cannot consent before twelve nor a man before fourteen; yet this inchoate and imperfect marriage (from which either of the parties at the age of consent may disagree) after the death of the husband shall give dower to the wife." (Coke, Institutes of the Laws of England. I-V-36.)—Ed.

no right to sell, dispose of, or waste the donation which he gave his wife, or the dowry which he receives from her, as long as the marriage lasts, except where such a gift has been appraised. This should be observed for the following reason, namely: in order that if a separation takes place the property of each of the parties may be returned to them, free and without encumbrance, to dispose of at their pleasure, or, where the marriage is dissolved by death, that it may descend intact to their heirs.

LAW VIII.

Who Should Give Dowries.

Dowries can be settled in many ways, for there are some which are voluntarily arranged, as, for instance, a wife can give a dowry to her husband for herself, or anyone else can give it in this way in her name. There are other persons who are required to give dowries through compulsion, though they may not desire to do so, as, for instance, a father, when he marries a daughter whom he has under his control; and even if she has property of her own, or may have obtained it from some other source or not, her father is bound to bestow her in marriage and give a dowry with her. Moreover, a paternal grandfather, who has a granddaughter under his control, is bound to provide her with a dowry when he gives her in marriage, although he may not desire to do so, where she has no property of her own out of which she, herself, can give a dowry; if, however, she has property to give as a dowry, her grandfather is not bound to give a portion with her out of his own possessions, if he does not desire to do so, but he should provide her with a dowry out of her own property. The same rule applies to a great-grandfather where he has a great-granddaughter under his control.

LAW IX.

Who Should Be Compelled to Give Dowries to Women When They Give Them in Marriage, and Who Should Not.

A mother should not be forced or compelled to give her daughter a dowry, although such compulsion can be used against a father, as stated in the preceding law, but she can voluntarily provide her with a dowry, if she desires to. Where, however, the mother is a heretic, a Jewess, or a Moor, she can be compelled to provide her daughter with a dowry if the latter is a Christian. Moreover, every man who has under his control or guardianship a girl and all her property, and she is old enough to be married, can be compelled to give her in marriage and provide a dowry in proportion to the property she owns, and the rank of the party she is to marry. If, however, he should fix the dowry at a larger figure than the property of the girl amounts to, it will not be valid. Any of the persons above mentioned in this law and in the preceding one who forbids a woman under his control to marry, when she desires to do so, and is of lawful age—or, influenced by malice, is unwilling to permit her to consider marriage, in order that he may make use of her and her property—shall be compelled by the judge of the district to give such person in marriage, and provide her with a dowry, as above stated.

LAW X.

In How Many Ways Dowries Can Be Given.

A promise is called, in Latin, *stipulatio*, and is another way in which a dowry can be established. This would be the case where anyone says to the woman whom he marries: "Do you promise to give me as a dowry, such-and-such a vineyard, or such-and-such a tract of land, or so many maravedis of yours which such-and-such a man owes you?" and she replies: "I promise to do so;" in a case of this kind and by words like these, dowry by promise is established. And a dowry is also settled in another way, called, in Latin, *pollicitatio*, which means a simple promise made at the same time with the donation. This would be the case where a wife says to her husband: "I promise you these maravedis, or this house, or this vineyard, (or any other property whatsoever which she gives), and I give them to you now."

A dowry is settled in still another way, as where a woman promises to give her husband something as a dowry, mentioning it specifically, and says that she will give it to him, or to someone else in his name; in this instance, although she gives it to the other party her husband understands that, he himself, received it, and for this reason he is obliged to be responsible for it, if it should become necessary.

LAW XI.

Dowries Can Be Given Absolutely, With a Contract, or Without It.

A dowry can be settled absolutely or conditionally. It is understood to be settled absolutely, when the wife says to the husband, or to another person in his name, that she agrees to give a hundred maravedis or some other property, mentioning it specifically, as her dowry. It is made conditionally, when a woman says to her husband, (or someone else does so for her) that she promises, or agrees to give him some property as a dowry, if the marriage is consummated. A condition of this kind is always understood whether it is mentioned or not.

LAW XII.

Those Who Are to Give Dowries Should Appoint a Time When They Are to Be Given.

Those who have a contract to give a dowry can designate a certain day or time at which to give it, or they can agree that it may not be given at any certain date. They can designate any certain day, as where the party who promises to give the dowry makes an agreement to give it on a certain day, mentioning it specifically. And it would be a certain time, when he says that he promises to give it during the same year in which he made the agreement, and by this year it is understood that the time should be counted from the day on which the marriage is celebrated, and not previously, although the contract may have been made before that took place.

The time will be uncertain where a woman says, (or some one else does so for her): "I promise to give a hundred maravedis, as a dowry when I die." A difference exists here, for if a wife settles a dowry upon her husband in this way it will not be valid. This is the case because she promises to give it at a time which has no relation to the marriage, and, moreover, the husband will not be able to profit by it. But where any other person makes such settlement, by speaking as follows: "I promise to give you so many maravedis as a dowry for your wife," when I die; a promise of this kind will be valid; for it may happen that the party who promised this will die at such a time that the marriage between the parties to whom he makes the bequest will be still in existence.

LAW XIII.

Which Dowries Can Be Paid in Cash, Without Any Agreement, and Without the Appointment of Any Time.

Tradere in Latin, means to give, in Castilian, and this is another way in which a dowry is settled. That is where a woman, or some one else for her, gives to her husband, or to another party in his name, property either movable or immovable by way of dowry, without delay, not promising it to him, or making a contract of any other kind to give it to him, but actually presenting him with it, or placing him in possession of the same. What we mentioned above with regard to its being given to another in the name of her husband, is understood to refer to where the husband takes care of it; for, in case of this kind if the husband does not take care of it, and the dowry is lost, it will be at the risk of the wife and not at that of the husband.

A dowry is settled in still another way, and that is where the husband is the debtor of his wife, and says to her: "Permit me to give you, as a dowry, so many maravedis, or such-and-such property that I am under obligations to give you;" and she replies: "I consent to this and I confirm it, and I am paid;" just as if she had received the property. This rule also applies where the husband owes any other man whomsoever, and the latter releases the debt in the manner aforesaid, giving it to him as a dowry in the name of the woman whom he marries, for, in this instance, the debt belongs to the husband as the dowry of his wife.

LAW XIV.

Out of What Property Dowries Can Be Given.

A dowry can be set apart, or settled out of property called immovable, just as it can out of that called movable, of whatever nature.¹ If, however, a woman desires to give a dowry to her husband consisting of real property and she is under twenty-five years of age, she cannot herself do so, although she may have a guardian; unless she applies to the judge of the district, to grant her permission; but if she desires to give her dowry out of personal property, she can do so with the consent of the person who has charge of her and her property, and she is not required to apply to the judge of the district.

¹ By the French Code all the property of the wife, whether in possession or expectancy, may be included in the dowry, which, however, cannot be fixed or increased during marriage, and during the continuance of the latter the husband alone has the right to administer the property.

Neither husband nor wife, nor both together, can dispose of, or encumber any lands included in the dowry, except under circumstances of absolute necessity, or where such alienation or hypothecation has been authorized by the marriage contract. In case the dowry is imperiled, the wife can demand a separation of goods. Where the marriage is dissolved, the husband or his heirs are required immediately to restore to the wife the real estate forming the dowry. (Cod. Civ. de Fr. III-V. Art. 1540-1570.)

The Spanish law, in general, resembles the French. Dowry is either estimated or non-estimated. It is estimated when the property is appraised when constituted, and its ownership transferred to the husband who is bound to return its value. The wife can, with the consent of her husband, alienate or encumber the property of the non-estimated dowry,—which may, or may not, be appraised—and the restraints imposed upon her are not so rigid as in France. (Cod. Civ. de Esp. IV-III-3.)

In Italy the property belonging to the dowry cannot be disposed of or encumbered without the consent of both parties confirmed by the decree of a proper tribunal, and then only in case of necessity or manifest utility. Such a transfer is void, even with consent, except it be specifically authorized by the terms of the marriage contract. (Cod. Civ. d'It. III-V-2.)

The provisions of the Louisiana law relative to dowry coincide, for the most part, with those of the Latin races from which they have been derived. The husband becomes the proprietor of the chattels and owes only this estimated value. This did not apply to slaves without an express stipulation to that effect. The real property included in the dowry can not, under any circumstances, be transferred to the husband. (Civ. Cod. of La. VI-II-3.)—Ed.

LAW XV.

A Woman Can Give to Her Husband, by Way of Dowry, a Debt Which Is Owing to Her.

Where a debtor owes a debt to some woman, and she wishes to marry, she has the right to direct her debtor to pay what he owes her to her husband as her dowry. This is understood to be the case where the other party acknowledges the debt, and promises the husband to pay it to him. This is another way in which a dowry is settled, and it is called in Latin, *delegatio*. And, in a matter of this kind, a distinction exists, for where the debtor is the father, the grandfather or the great-grandfather of the woman, although the husband may be negligent in not compelling any of the above-mentioned persons to pay said debt by legal proceedings, he will not run the risk of losing the dowry if the party who owes the debt afterwards becomes poor, so as to have nothing with which to pay it, but it will be at the woman's risk. For if, in a case of this kind, she desires to claim her dowry of her husband while he is living, or of his heirs after he is dead, for the reason that he was unwilling to compel any of the above-named persons to pay it by legal proceedings, she should not be heard, because sons and sons-in-law, should not use compulsion against their fathers or their fathers-in-law, as they do against strangers. But where the woman gives, as a dowry to her husband, the debt which was owing to her, and her debtor is not one of the relatives we have mentioned above, a distinction may arise as follows, namely, the debt may be either obligatory or voluntary. If it is obligatory, as, for instance if it is owing for something which the party had sold or loaned to the debtor, or for any other debt of this kind, whose payment can be enforced, and the husband was negligent in demanding said debt of the debtor when he had the property to pay it with, and he afterwards becomes poor, so that he can not pay it; under such circumstances, it will be at the husband's risk, and he, or his heirs, will be required to be responsible to the woman for such a dowry when the marriage is dissolved.

When the debt is a voluntary one, as where any person, of his own accord and without compulsion, promises to give some personal or real property to the woman, in this case a distinction may arise in the following way, for what he promises may be some specified property, or it may not. The property would be specified where a wife says to her husband; "I give you, as a dowry, so many maravedis, which Such-and-Such a man owes me, and I order him to pay them to you," and the debtor promises certainly to pay them; where a husband does not claim a dowry of this kind, while the party who owes it has the means with which to pay the same, and afterwards becomes poor, it is at the husband's risk, and he is bound to pay it to his wife if the marriage is dissolved. Where the property is not certainly indicated, as where a wife says to her husband: "I give you, as a dowry, a hundred maravedis, which Such-and-Such a man promised me, and I direct him to pay them to you;" and the debtor says to the husband: "I will give you what I owe your wife;" not stating exactly how much; in a case of this kind it is at the woman's risk, so far as the loss of any of the dowry is concerned, and not at the husband's, although he may be negligent in demanding it; for, under such circumstances, although the woman may demand such a debt, the debtor will not be required to pay her more of it than he is able to.

LAW XVI.

What Dowries Can Be Estimated When They Are Given, and If There Is Any Fraud in the Estimate, When It Should Be Set Aside.

A dowry can be estimated when it is settled, or it may not be estimated. It is estimated when the party who gives it says: "I give you such-and-such a house, or such-and-such a vineyard, as a dowry, and I estimate its value at a hundred

maravedis." It is not estimated when the party who gives it says: "I give you such-and-such property, or such-and-such a house, as a dowry." Where the value of the dowry is estimated, as aforesaid, and the appraisement is greater or less than it is worth; and either of the parties considers that this is done by fraud; he can demand that it be set aside, and the party who gives the dowry, as well as the one who receives it, can do this. It is understood that this should be observed solely with regard to the dowry, for, so far as the fraud is concerned, whether the property has been appraised for more or less than it is worth, it should always be remedied where the party who considers himself defrauded proves it, as above stated. This however does not apply to any other contracts, for the party who committed the fraud is not bound to correct it, unless it amounts to more or less than the just price which the property is worth. This would be the case where someone sells property that is worth twenty maravedis for forty-one or what is worth forty for nineteen.

LAW XVII.

Concerning Separate Property Belonging to the Wife, Which Is Not Given as Dowry, and Which Is Called, in Latin, Paraphernalia.

All property and possessions, whether personal or real, which women keep separately for themselves, and do not enter in the account of a dowry, are called in Greek *parapherna*, and this derived its name from *para*, which means, in Greek, the same as near, and *pherna* which takes the place of dowry, and means, in Castilian, all those things which are joined to, or connected with, a dowry. All the articles called, in Greek, *parapherna*, when they are given by a wife to her husband with the intention that he shall have control of them as long as the marriage lasts, he has the right to keep, just as those which are given him by way of dowry. Where they are not specifically given to the husband, and it was not the intention of the wife that he should have control of them, she always remains their owner; and the same rule applies whenever any doubt arises whether she gave them to her husband or not.

All these things called *parapherna*, have the same privilege as a dowry has, for just as a husband is responsible to his wife to the full amount of his property, if he disposes of or wastes her dowry, he is also responsible for the *parapherna*, no matter what may happen to it. And although an obligation of this kind may not be contracted by words, it is understood to be created solely by the act itself. For, as soon as the husband receives the dowry and the other property called *parapherna*, all his property, for this reason, becomes bound to his wife, not only what he has at the time, but also what he may acquire subsequently.

LAW XVIII.

Where Property Given as a Dowry Is Increased or Diminished in Value, Who Should Have the Profit, and Who Should Suffer the Loss.

A dowry, or a marriage gift can be increased or diminished, and for this reason we desire to show here who is entitled to the profit of it, and who must suffer the loss. We decree that if the dowry given by a wife to her husband is estimated at a certain sum, as above stated, and is increased or depreciated in value afterwards, the husband is entitled to the profit, and must be responsible for any depreciation of the same, except where the said increase or depreciation happens before the marriage has been contracted; for then the wife will be entitled to the profit, and will be responsible for the loss. This is the case because the donation is made under such a condition as, "provided the marriage is consummated," for although an estimate may have been made of its value, as aforesaid, it will

not be valid if the marriage is not consummated. Wherefore, until the marriage is celebrated, a wife is responsible for the loss, and is entitled to the profits of the dowry, although it may be in possession of her husband.

Where a dowry has not been appraised, or its value estimated, and the wife gives it to the husband, then the wife must suffer the loss, or can have the profits of the dowry, at any future time; except where the husband is entitled to the income of the property, and the profits arising from the same, for the support of the household. When a wife settles a dowry on her husband, she should do so as follows, namely: she should say that she gives certain houses as a dowry, and values them at two hundred maravedis, and make the estimate in such a way that, if the marriage is dissolved, the husband may have the choice of returning the house or of giving her two hundred maravedis; and the dowry having been settled in this way, the wife, and not the husband, will be entitled to the profits and must suffer any loss arising therefrom, if her husband chooses to give her the house, whether they are in a better or worse condition than they were originally; except where the wife can prove that the property which she gave her husband, as a dowry, was injured through his fault; or where her husband, when the dowry was given to him by his wife, agreed to be responsible for all the loss which it might suffer.

LAW XIX.

When the Wife, and Not the Husband, Is Responsible for Any Injury to Property Given as a Dowry.

Where a woman designates a house, a vineyard, or any other real property as the dowry to be given to her husband, and estimates its value, if he has the choice to accept what she gives him as a dowry, or its value, or if the marriage is dissolved, and a choice is not allowed the husband; as stated in the preceding law, the wife, and not the husband must suffer any loss, or be entitled to any profit arising from said property, if it has either increased or depreciated in value. It may happen that when the wife settled the dowry, she did not say that the right of the choice above-mentioned existed, or that she gave it to her husband; but that she gave him certain property, valued at so many maravedis, as a dowry; and that she made this estimate, so that, in case the property given as a dowry should deteriorate, the amount of depreciation might be ascertained by means of said estimate. In this case, also, the wife, and not the husband, will be entitled to the profit, and must bear any loss which may result.

LAW XX.

Who Is Responsible for the Injury to, or the Profits Derived from, Female Slaves, Given by Way of Dowry, Where They Are Increased or Diminished in Value, or Die.

Ancilla, in Latin, means, in Castilian, a female slave, and for the reason that it sometimes happens that women give female slaves to their husbands, by way of dowry, therefore we desire to speak of them here. And we decree that where a wife presents a female slave to her husband, and places a value upon her when she gives her to him; and he promises to pay her the value of said slave if the marriage is dissolved by death, or by the decision of a court; in a case of this kind, the husband has the right to any profits, and must be responsible for any injury arising on account of said female slave. If such a female slave should have children after she was given by way of dowry, they will also belong to the husband. But where the husband himself assumes the entire risk of depreciation but not of death, or of death and not of any depreciation, then, although the value of the slave was estimated, any children or child born of said slaves shall not belong

to the husband, but to the wife. Where the wife does not estimate the value of the female slave given to the husband, she, and not her husband, shall be entitled to the profit, and be responsible for any loss connected with the said female slave.

LAW XXI.

Concerning Flocks Given by Way of Dowry, and Other Property Which Can Be Counted, Weighed, or Measured, and Who Must Bear the Loss, or Be Entitled to the Profit Derived from Said Property.

Wives sometimes give beasts, by way of dowry, to their husbands, and when they are settled by way of dowry, if a value is not placed upon them they will be at the risk of the wife, and the husband can collect the profits of them to maintain the marriage as long as it lasts. Where, however, it happens that any of the animals, given by the wife as a dowry to her husband die, the husband is bound to provide an equal number, out of their increase, in the place of those who perished. But where the wife gives her dowry in something which can be counted, as, for instance, in ready money of any description whatsoever; or in property which can be weighed, as gold, silver, or any other metal, or wax or anything like it; or in anything which can be measured, as wheat, wine, oil, or merchandise of this kind, the husband, and not the wife shall be entitled to all the profits, and be responsible for all loss which may happen to any such property. This is the case because after the wife has given it to the husband, he can sell, or do what he pleases with it, in order to make use of it, for the purpose of the marriage, as long as it lasts. But, notwithstanding all this, he is bound to return to his wife an equal amount of property of the same quality as that she gave him, by way of dowry, if the marriage is dissolved during his lifetime without her fault, or where it is terminated by death.

LAW XXII.

Who Assumes the Risk of the Dowry, When It Is Lost by a Decree of Court.

When a man is defeated in court in a suit involving the dowry given him by his wife, or which anyone gave him in her name, and no estimate was made of said dowry, when it was settled; it will be at the wife's risk if the dowry is lost or depreciated in value. There is, however, a distinction in this respect, for the party who gave the property as a dowry, either bound herself to make it good to him who received it from her, if it was lost by a decree of court, or she did not. If she bound herself to do this, she is required to carry out what she obligated herself to do, whether the woman did this, or someone else for her. And if the said party did not enter into such an obligation, she either acted in good faith when the dowry was settled, thinking that it was her own, and that it was not encumbered; or she acted fraudulently, believing that it belonged to someone else; and if she acted in good faith when it was given, she is not bound to restore it, even though it may be lost in court; but if she acted with a fraudulent design she is bound to make it good. Moreover, we decree that if the husband, after the marriage has been contracted, is defeated in court in a suit involving the dowry given to him by his wife, and the value of said dowry was estimated when it was given; the wife is bound to give him other property of the same kind, and as good as that which she gave him as her dowry. The same rule applies where anyone gave him such property in her name, or he is bound to cause it to be recovered. Whatever is given to the husband in this way should be counted instead of the first dowry, and he should make use of it in the same manner.

LAW XXIII.**For What Reason a Husband Acquires the Dowry Given Him by His Wife,
and She the Donation Which Her Husband Gave Her on Account
of the Marriage.**

The husband acquires the dowry given him by his wife, and the wife the donation which her husband gave her on account of the marriage, in one of the three following ways: First, on account of any contract entered into by them; second, by the offence which a woman commits when she is guilty of adultery; third, through custom. That which relates to a contract made by them takes place in the following manner; as when both of them agree with one another that, if one of them dies without leaving any children, the survivor may have the entire dowry or donation, or any part of the same, according as they may agree. A contract of this kind should be made equitably between the parties, and where it has been agreed that the husband should obtain the dowry of his wife, and nothing is said about the donation, or marriage gift, it is understood that any agreement which refers to the dowry includes also the donation.

The third way in which a dowry or donation is acquired, and which is dependent upon custom, is where it has been a custom practiced for a long time, in some locality, for a wife to acquire the donation when her husband dies, or the husband to receive the dowry when his wife dies; or where it was a custom that one of them should have a right to it when the other entered a religious order. Whatever is stated in this law concerning the right of the husband or wife to the dowry or donation given on account of marriage, in any of the three ways above mentioned, is understood only to apply where the parties have no children. For where they have any, the children are entitled to the donation or the dowry, and the father or mother, whenever one is living, or did not enter a religious order, or did not commit adultery, should have the income of said property during his, or her lifetime.

We also decree that where a husband or wife dies intestate, and does not leave any children or other relatives to inherit his or her property, the survivor shall be entitled to the dowry or donation given on account of marriage, as well as all the other property which the deceased party possesses; but, in this case and in the other three already mentioned, where, for any other reason whatsoever, the marriage is lawfully dissolved, the donation should always be returned to the husband, and the dowry to the wife. Where the wife has any separate clothing which her husband has given her, and he dies, she should immediately return said clothing, with everything belonging to it, to the heirs of her husband, retaining only the clothing which she is wearing.

LAW XXIV.**What Should Be Observed When Persons Marry in One Country and Enter
Into Agreements With One Another, and Afterwards Go to Reside
in Another Country, Where the Custom Is Opposed to
Said Agreement.**

It happens frequently that, when a husband and wife marry, they agree with one another that when one of them dies the other shall inherit the donation or gift bestowed by reason of marriage, or they agree in what way they may hold the property which they gained together; and, after they are married, they go to dwell in some other country, where a custom, opposed to said agreement or contract which they have entered into, is practiced. And for the reason that there may be a doubt, when either of them dies, as to whether the contract which they entered into before, or when they married, or the custom of the country to which they

stated should be observed, we desire to explain this. We decree that the contract which they made with one another shall be valid in the way which they agreed upon, before or at the time when they married, and shall not be interfered with, by any contrary custom existing in the country where they went to reside. The same rule will apply where they did not enter into any contract with one another; for the custom of the country where the marriage was contracted, and not that of the place to which they moved, should prevail with regard to dowries, marriage gifts, and any earnings they may obtain.

LAW XXV.

How Many Things Are Necessary to Enable a Husband to Obtain the Profits of the Dowry of His Wife.

Three things are necessary, and the husband must have them, in order to obtain the income of the dowry given to him by his wife. The first is, the marriage must be consummated. The second is, that he be placed in possession of the dowry. The third, that he endure the burden of marriage by supporting himself, his wife, his children, and any other family which he may have; and where the husband has these three above-mentioned things he is entitled to the income of the dowry which his wife gives him; whether its value be estimated, or not; except in the case previously stated in the law which treats of the children of a female slave given as a dowry, or where she says that the slave shall not belong to her husband, if he does not assume the risk of the depreciation in value, or the death of the said slave. Nor, moreover, should the earnings of a slave of this kind, or those of any other slave whomsoever given by the wife, as a dowry, belong to the husband, where the said slave obtains them as a gift from someone, or they are left to her by will; but whatever said slaves earn by the labor of their hands, or by means of the money of the husband, should belong to him, and not to his wife. What we have stated concerning slaves is understood to apply where the husband did not accept them at a stated value, and did not assume the responsibility of their depreciation and death.

LAW XXVI.

How the Income of a Dowry Should Be Divided When a Marriage Is Dissolved by a Decree of Court.

When such an impediment exists between married persons (provided it is not adultery), that a separation must take place in their lifetime, the dowry should be returned to the wife, as we have above stated. This is understood to apply to cases where its value was not estimated at the time it was given, for when it is so estimated, she is entitled to the appraised value of it, and no more. And for the reason that doubt may arise as to whom the income of the dowry given to a husband, without its value being estimated, shall belong for the year during which the separation takes place, we desire to explain this here. We decree that it shall be divided in the following way: the husband should take a part of the income of the said dowry during the last year, proportioned to the number of months and weeks which the marriage lasted during that year, and the balance should belong to the wife, and to her heirs if she should die; the expenses incurred by the husband in cultivating the property given him as a dowry during that year having been deducted. This year should be reckoned from the day on which the marriage was contracted by words relating to the present time and the dowry delivered by the husband, when the separation takes place during the same year in which the marriage was celebrated. The aforesaid portion which we stated should belong to the husband until the day when the separation took place, is also

understood to relate to the income already collected, up to the day of divorce, as well as that which remains to be collected from that time forward during the same year. The same rule applies where the dowry is of such a kind that it yields two crops a year, or where it yields a crop only once in three years.

LAW XXVII.

To Whom Trees Which Are Cut Down, or Torn Up by the Roots on Land Given as Dowry, Should Belong.

Where a husband fells trees such as it is not customary to cut down which stood on property which his wife gave him as a dowry, whose value was not estimated, they should not belong to the husband but to the wife; for a tree should not be taken or reckoned as income, although the fruit of it may be gathered before it is cut down. The same rule applies where the wind tears up trees of this kind by the roots, or overthrows them, or where any other person cuts them down; for they should belong to the wife, and not to the husband. The case is the same where a wife gives her husband some property, as dowry, on which stone is found after it has been given, for if the stone is of such a nature that it will not be increased in value after it has been quarried; it should belong to the wife, and not to the husband; if, however, it is of such a nature that it will increase in value, as happens in certain places, under such circumstances, the income should belong to the husband during the continuance of the marriage.

LAW XXVIII.

Concerning the Income Which Men Who Are Betrothed Receive from a Dowry Before Marriage.

Men who are betrothed sometimes collect the income of dowries given them by their affianced wives before marriage, and the income received in this way does not become their property, but increases the amount of the dowry, for the reason that it should be added to it, and counted with it. And, although, after the marriage has been celebrated, income of this kind, as well as the dowry, should be under the control of the husband, and he should collect it for the support of the household; nevertheless, if the marriage is dissolved said income should belong to the wife; when, however, her betrothed supports her, and provides her with clothes before marriage, the income which he received from the dowry at that time should not be included in it, or demanded of him. This is a matter of justice, but not of law. It might occur, also, where a man is betrothed to a girl not of age, and has to take care of her until she becomes of age.

LAW XXIX.

Whether a Wife Can Claim the Dowry Which She Gave Her Husband During the Continuance of the Marriage.

Where a husband is an impostor or a spendthrift of his property, so that his wife thinks that he will become poor through his own fault; as, for instance, where he is a gambler, or has other bad habits by means of which he is foolishly wasting his money, and his wife fears that he will waste or squander her dowry; she can bring suit in court to compel him to surrender it to her, or give security not to dispose of it; or place it in the hands of some one who will preserve it and obtain an income from it justly, and out of said income properly and honorably earned give to herself and her husband sufficient to live upon. This can be done in this manner during the continuance of the marriage. But where the husband is prudent

in taking care of, and regulating his own affairs, and does not foolishly waste his own property, as above stated, although he may be reduced to poverty by some accident, his wife can not demand her dowry of him so long as the marriage lasts. The statement of the law which says that a wife who places her body under the control of her husband should not deprive him of the dowry she gave him, should be understood to apply to a case of this kind.

LAW XXX.

To Whom the Dowry Should Be Delivered When a Wife Dies.

When a wife dies—while her marriage is still in force—and leaves no children to inherit her property, the dowry should be given to her father. This is understood to apply to cases where a dowry was given *profectitia*, that is to say, when it was obtained from the property of the father, except where the husband is entitled to it for one of the three reasons stated in the law which begins “The husband acquires.” But where a separation takes place during the lifetime of the daughter, by reason of some lawful impediment, and the dowry is *profectitia*, it should be delivered to the father (if he is living) and the daughter together. Where the father is dead, it should be delivered to the daughter, whether she has any children or not. When the dowry is *adventitia*, and a divorce took place during the daughter’s lifetime, the dowry should be given to her, and not to her father, although he may be living. When any other person, except the father of the wife, gave the dowry and he gave it absolutely without any contract, and the wife dies without children, the dowry should be given to her heirs; but if any agreement was made at the time it was given, by the party who gave the dowry, it should be observed according to the terms prescribed by him.

LAW XXXI.

When a Dowry Should Be Given to the Heirs of the Wife.

When a marriage has been dissolved for any lawful reason, as soon as a divorce has taken place, the dowry should be delivered to the wife or her heirs, if it consists of real estate; but where it consists of personal property it should be delivered within a year from the time when the divorce was granted. The same rule applies when a marriage is terminated by death. For the dowry or the donation should be given to whomsoever is entitled to have it, if it consists of immovables, just as soon as the marriage is dissolved, and if it consists of movables, within a year; except where it is to be delivered to children who are not of age, for then the father or mother can hold it until the former attain their majority. It is understood that this should be done in such a way as to support and bring up the children, and so that the dowry may not be alienated or squandered.

LAW XXXII.

What Expenses the Husband Can Claim and Retain When He Delivered the Dowry to His Wife or to Her Heirs, Where the Marriage Is Dissolved by a Decree of Court, or by Death.

When a husband improves the property which his wife gave him as dowry, its value having not been estimated at the time; as, for instance, where he rebuilds it, or makes additions to it through which it becomes better and returns more income, and the money expended upon it increased the value of the dowry; he is entitled to, and can deduct, whatever expenses he incurred in addition to the rents and profits which he collected from said dowry. But where a husband incurs

expense voluntarily with regard to the dowry, and which has been made more for its adornment than for its benefit; as, for instance, where it consists of houses and he paints them, or does anything else of this kind, he should not include it and can not demand such expense when he delivers the dowry. However, where it happens that a husband cannot immediately deliver the entire dowry at the time stated in the preceding law, the judge of that district should see that he pays whatever he can, so that he may retain some property to live upon, and should take from him security to pay the balance as soon as he is able. It is understood that the same rule should be observed with regard to children, where it happens that the dowry must be given by them to their mother on account of their father.

TITLE XII.

Concerning Those Who Marry Again, After the Dissolution of the First Marriage.

The holy fathers agreed with one another, and considered it proper, in order to avoid a greater danger by means of a lesser one—as Moses did in the old religion, by consenting (although it grieved him)—that a woman should be given a writing of divorcement, when it was desired to separate her from her husband; which is called, in Latin, *libellum repudiū*. He did this to avoid homicide, for he thought there was less danger in separating her from her husband, than in putting her to death. In compliance with this, the Apostle St. Paul established the rule in the new religion that men could marry more than once. He did this to avoid the sin of fornication, for he considered that it was a less evil to marry than to commit so great an offense.

Since in the preceding Title we have spoken of the different ways in which marriages are dissolved in life, as well as in death, and also of donations and dowries and how they should be given and surrendered after separation; it is proper that we speak in this Title concerning those who marry again after the dissolution of the first marriage. We shall show whether persons can marry twice or more; who can do this and when they can do it; who can solemnize the marriage; and what punishment women should suffer who marry before a year after the death of the husband.

LAW I.

Whether Men Can Marry Twice or More, and Who Can Do So.

Men and women can, according to the Holy Church, marry twice, or more, after the first marriage has been dissolved on account of some legal impediment, or by death. All those who have not promised to enter a religious order can marry after they have been separated from their wives for any of the above-mentioned reasons. Those, also, can do so who have not received a religious order, and such as are not of a cold temperament. We decree that the same rule shall apply to women.

LAW II.

Who Should Solemnize the Marriages of Those Who Marry a Second Time, and Who Should Not.

A priest can, in a church, solemnize the marriages of those who marry twice or more, where they are separated from the matrimonial condition in which they formerly lived, on account of some lawful impediment, or by death. The statement which seems at variance with this, by which the Holy Church forbade priests to solemnize in church the marriages of those who married twice, or more, is understood to refer to such as marry a second time while the wives to whom they were formerly united are still living. For priests who knowingly solemnize the marriages of persons of this kind a second time, are guilty of a serious offence, and should suffer the penalty imposed upon them by the Holy Church. But those who solemnize the marriages of persons who marry twice, or more, where the marriage has been dissolved on account of some lawful impediment, or by death, as aforesaid, are not liable to any penalty. This is the case because ceremonies of this description do not constitute a sacrament, but are prayers said over those who marry subsequently to the sacrament already created by the marriage. And since they do not constitute a sacrament, and the sacrament is not doubled by means of them, although the ceremony may be performed, it should not, for this reason, be forbidden to persons to marry as many times as they wish, provided they do so according to law.

LAW III.**Whether or Not a Woman Can Marry, Without Being Liable to a Penalty,
Immediately After the Death of Her Husband.**

A woman is free and released from the tie of marriage after the death of her husband, as stated by St. Paul. For this reason the Holy Church did not consider it proper that any penalty should be imposed where a woman marries as soon as she pleases after the death of her husband: only she should marry as she ought, and not act contrary to the prohibition of the Holy Church. The secular fuero, however, forbids her to marry before a year, and impose a penalty upon those who do marry before that time. The penalty is as follows, namely; the woman who does this shall be considered as of bad reputation, and shall lose the marriage gift and donation which her deceased husband gave her, and any other property which he may have left her by will; and the children left by her husband shall have said property, and, if he did not leave any children, the relatives entitled to his possessions shall have it. She shall be liable to the same penalty if she is guilty of any wickedness with her body before that time has elapsed. A woman, however, who was betrothed—if her affianced dies before the marriage was consummated—can marry when she wishes, without being liable to any penalty. Moreover, a woman is not liable to a penalty who marries with the consent of the king, before the year has elapsed. The same rule applies, and a woman is not liable to any penalty who betroths herself before the year has passed, provided that the marriage does not take place during that period.

TITLE XIII.

Concerning Legitimate Children.

Among all the advantages which we mentioned in the preceding Titles as pertaining to matrimony, one is that the children who are born of it are lawful and begotten according to law. Children of this kind, so the saints declare, God loves, assists, and endows with strength and power to conquer the enemies of His religion. And they are, as it were, sacred, since they are begotten without impropriety or sin; and, leaving this out of consideration, they are considered more noble, because they are certain and known better than others born of many women who cannot be taken care of like those born of one, as we have already stated. In addition to this, according to nature, they should be more choice and strong, for the reason they are not liable to suffer shame on account of their mothers, as others do; and besides, because their relatives, as well as other men, honor them, and concede to them a better position than they do to their other brothers, although the latter may be born of more noble mothers.

Wherefore, since in the preceding Titles we spoke of betrothals, marriages, and everything else appertaining to them, it is proper that we should speak in this one of the children born of these. In the first place we shall explain what a legitimate child means and which one should be so called, and what honor and advantage attach to children from being legitimate.

LAW I.

What a Legitimate Child Means, and Who Should Be So Called.

A legitimate child means one begotten according to law, and those should be called legitimate who spring from a father and mother that are truly married, according as the Holy Church directs. If between those who are married openly in the face of the church, such an impediment should exist that the marriage must be annulled on account of it, the children begotten before it was known that an impediment of this kind existed will be legitimate. This will also be the case where both the parties did not know that such an impediment existed, as well as where only one of them knew it, for the ignorance of one alone renders the children legitimate. But, if after it had been certainly ascertained that such an impediment existed between the parties, they should have children, all those born subsequently will not be legitimate. Where, however, an accusation was brought before one of the judges of the Holy Church against any person during the existence of an impediment of this kind, which was not known to both parties or to only one of them; and before the existence of the impediment has been proved, or a decision rendered, they should have children, all they have during the interval when this uncertainty existed will be legitimate. Moreover, the children which a man has by a woman whom he keeps as a concubine will be legitimate, if he marries her afterwards; for although children of this kind are not legitimate when they are born, marriage has such force that, as soon as the father and mother are married, the children become for that reason, legitimate. The same rule applies where a man has a child by his female slave and afterwards marries her; for marriage has such extraordinary power that, as soon as this is done, the mother becomes free, and the children legitimate, for this reason:

LAW II.**What Advantage and What Honor Attach to Children Through
Their Being Legitimate.**

Honor and exceeding great advantage result to children by being legitimate, as, for this reason, they share the distinctions of their parents; and they can also receive any order or sacred office of the church, as well as other secular honors, and can inherit from their fathers, grandfathers, and other relatives, as stated in the Title concerning Inheritances, which others who are not legitimate cannot do.

TITLE XIV.

Concerning Other Women Whom Men Keep, and to Whom They Are Not Married.

The Holy Church forbids Christians to keep concubines, because they live with them in mortal sin. The wise men of the ancients, however, who made the laws, permitted certain persons to keep them without being liable to a temporal penalty, because they considered it less wicked to have one than to have many, and in order that the children born of them might be more certain. And since in the preceding Titles we spoke of marriages and of children born of them, we desire to speak here of concubines, and we shall afterwards speak of the children born of them. We shall state in the first place, who should be accepted as a concubine; whence this name is derived; and who can bear it; and in what way a union of this kind is entered into.

LAW I.

What Kind of a Woman Can Be Accepted as a Concubine, and Whence She Derived This Name.

Every woman who, from her birth, has been free from all servitude and has never been a slave, is called in Latin *ingenua mulier*. A woman of this kind can be accepted as a concubine according to law, whether she belongs to a low family, or was born in some vile place, and whether she makes an evil use of her body, or not. The name *barragana* is derived from two words; one of them Arabic, which means outside, and the other Castilian, which means to gain, and these two words, when united, mean something earned outside the rules of the church. For this reason those who are born of women of this kind are called children of gain. A woman who has been emancipated, as well as a slave, can also be kept in this way.

LAW II.

Who Can Keep a Concubine and in What Way This May Be Done.

Ordinarily, as the secular laws direct, any man who is not hindered by membership in a religious order, or by marriage, can keep a concubine without fear of temporal punishment, except he must not keep one who is a virgin or under twelve years of age, or a widow who lives honorably and has a good reputation. When anyone desires to take a widow of this kind, or any other woman free from birth, who is not a virgin, as his concubine, he should do so in the presence of reliable men, stating publicly before them, that he take said woman as his concubine. When he takes her in any other way a well grounded suspicion will arise against the parties that she is his lawful wife, and not his concubine; and when any suit is brought on this account the secular judge must so decide it, except where it is proved that the man took her as his concubine; but where the widow is not such a person as is mentioned above, but is of very low descent and has a bad reputation, or has been convicted of having committed adultery with a man who had a lawful wife, although she herself may be free, a man has no reason to take a woman of this kind as his concubine in the presence of witnesses, as is stated above in regard to the other.

Moreover, no man can keep as his concubine a woman who is his relative, or who is connected with him by affinity within the fourth degree; and this is the case because they would be guilty of a great sin, as we have explained, and which is called, in Latin, *incestus*. We also decree that there are men who

can keep concubines who should not take lawful wives. These are those who are called, in Latin, *praesides provinciarum*, which means, in Castilian, governors of certain countries. A man of this kind cannot in the country where he is governor, marry another lawful wife, during his term of office, but he can keep a concubine there, if he has no lawful wife. This was forbidden on account of the great authority that persons of this kind have, so that they might not seize any woman by force for the purpose of marrying her. For it might happen that some man who was unwilling to give his relative or his daughter as a wife to said official would be compelled to do so through fear, on account of the compulsion he might exercise, or, the injury he might cause him by reason of the authority of the position he occupies. No man can keep several concubines, for, as the laws direct, she is called a concubine who is one single person, and she must be such so that the party who keeps her can marry her, if he desires to do so.¹

LAW III.

What Women Noblemen and Men of Exalted Rank Should Not Take as Concubines.

Persons who are eminent and of great distinction, and occupy important offices, are called, in Latin, honorable persons; as, for instance, kings and their descendants, and counts, as well as the offspring of the latter, and other distinguished men like these. Although persons of this kind can keep concubines according to law still there are women they should not keep in this manner; as, for instance, slaves, or the daughters of slaves; nor, moreover, should they keep one who was emancipated, or her daughter, or a female buffoon, or her daughter; or one who keeps a drinking shop, or a huckster, or a procuress, or their daughters; or any one else of such as are called degraded either by reason of themselves, or on account of those from whom they are descended, for it is not proper that the blood of nobles should be contaminated by, or mingled with that of such infamous women. Where any man of those aforesaid violates this law, and a woman of this kind has a child, it should not be called a natural child, but it should be called spurious, which means a bastard. Moreover, a child of this kind is not entitled to share in the property of its father, nor is the father bound to bring it up if he does not desire to do so.

¹ Concubinage was at first tolerated by the Roman law, and afterwards explicitly authorized by the *Lex Papia Poppaea*, nor was it legally abolished until the ninth century. It was subject to many restrictions, however, only one concubine was allowed, and a married man could not take one, or sustain such a relation with the wife of another. Violation of these provisions was classed as *stuprum*, and incurred the penalty of that offense.

The practice was quite general among persons of rank and station and their indulging in it was not subject to animadversion. Natural children were those born in concubinage; if legitimated, they were *non haeredes*, otherwise they were not in the power of the father, but, as the latter was known, they were entitled to support from him. They could be legitimated by marriage, imperial rescript, and will. In France, natural children can be rendered legitimate only by the matrimonial union of their parents. (Cod. Civ. I-VII-3), and in Spain and Italy, by marriage and royal decree. (Cod. Civ. de Esp. V-III-Art. 120.) (Cod. Civ. d' It. V-VI-2). Concubinage, an oriental institution, due to warmth of temperament and preponderance of females, though by no means disdained by the Anglo-Saxon of ancient and modern times, has never been recognized by his legislatures and tribunals. Common law marriage is the nearest authorized approach to it that we have in this country.—Ed.

TITLE XV.

Concerning Children Who Are Not Legitimate.

Men sometimes have children who are not legitimate, for the reason that they are not born in wedlock, according to law. And, although the Holy Church does not consider, or accept, such as these as legitimate, nevertheless, since it happens that men beget them, and as, in the preceding Title we spoke of concubines, we desire in this one to speak of children who are born of them. We shall show, in the first place, what is meant by children who are not legitimate; for what reason they are not considered such; how many kinds there are; how children are injured by not being legitimate; how they can be legitimized; and what benefit and advantage results to children through being legitimate.

LAW I.

What Is Meant By Illegitimate Children, for What Reasons They Are Considered Such, and How Many Kinds There Are.

The wise men of the ancients called children natural and illegitimate who are not born of a marriage according to law; as, for instance, those born of concubines, and bastards born of adultery, or of a female relative, or of women belonging to religious orders. These are not¹ called natural children, for the reason that they are begotten contrary to law, and in opposition to natural order. Moreover, there are children called in Latin, *manzeres*, who derived their names from two Latin words, *Manua scelus*, which means infernal sin. For those called *manzeres*, are born of women who live in prostitution, and give themselves to all who visit them, and for this reason they can not know to whom the children born of them belong. There are men who state that *manzer* means contaminated, because a person of this kind was wickedly begotten, and was born in some vile place.

There is another kind of children, called, in Latin, *spurii*, which means those born of women which men keep as concubines outside of their houses, and they are such as give themselves to other men, in addition to those who keep them, and, for this reason, it is not known who the father of a child born of such a woman is. There is still another kind of children called *notos*, and these are such as are born in adultery. They are called by this name because they appear to be the acknowledged children of the husband who has them in his house, when they are not so.

LAW II.

For What Reasons Children Should Not Be Considered Legitimate, Although They Are Born in Marriage.

Some persons marry clandestinely and by stealth, and have children. Where, in the case of persons marrying in this way, any impediment is discovered by reason of which the marriage should be dissolved, the children begotten by persons of this kind ought not to be considered legitimate; and they cannot excuse themselves by saying that one, or both of them, was not aware of the existence of said impediment. This is the case because the suspicion arises against them that they did not want to know whether an impediment existed which might prevent them from marrying, since they were married clandestinely. Moreover, the children of those who knew that an impediment of this kind existed between them on account of which they should not marry, will not be legitimate, although they may have married openly in the sight of

¹ So in original but evidently a misprint. See Law VI *infra*.

the church, and no other person publicly announced the impediment, and no accusation was brought against them on this account. This is understood to refer to cases where both husband and wife were aware of the existence of said impediment. Moreover, no child born of a father and mother who are not married as the Holy Church directs, are legitimate. Moreover, we decree that where a man has a lawful wife, and has children by a concubine while his wife is living, said children will not be legitimate, even though the lawful wife should die after this and her husband should marry the concubine, and this is the case because they were born in adultery.

LAW III.

What Injury Results to Children by Their Not Being Legitimate.

Great injury results to children through their not being legitimate. In the first place, they cannot share the honors of their fathers or grandfathers, and, also, when they are chosen for any high office or honor they may lose it for this reason, and, moreover, they cannot inherit the property of their fathers or grandfathers, or that of any other relatives from whom they are descended, as stated in the laws of the Title concerning Inheritances which treats of this subject.

LAW IV.

In What Way Emperors, Kings, and Popes, Can Legitimize Children That Are Not Legitimate.

Men petition emperors and kings in whose dominions they live, as a favor, to make the children which they have by concubines, legitimate; and where they grant such a request, and legitimize such children, the latter are, from that time forth, legitimate, and can enjoy all the honors and advantages which children born in lawful marriage do. Moreover, the Pope can legitimize every free man, whether he is the son of a priest or a layman, so that those whom he thus renders legitimate can become priests, and attain to, and hold offices of great dignity. And although the Pope may consent that some such persons be priests, it is not understood by this that he grants them permission to hold high ecclesiastical offices, unless he states this specifically in the dispensation; and, although he renders them legitimate, it is not to be presumed that, by the above mentioned proceedings, he grants them authority to hold bishoprics, except where he especially states this in the dispensation. And, although he may grant dispensations to some to have certain orders and the other offices above-mentioned, he cannot grant them any with respect to temporal matters, except where they are under his temporal jurisdiction. The same rule applies where an emperor, or king, renders any person legitimate; for although he can exempt them from anything relating to his temporal jurisdiction, he cannot do this in spiritual matters, which priests or curates can do.

LAW V.

How a Father May Make His Son Legitimate by Devoting Him to the Service of His Lord's Court.

Where a man keeps a mistress who is not a slave, instead of a wife, by whom he has a natural son, and the father takes said son to the court of the emperor or the king or to the Council of the city or town where he is, or within whose district he dwells; or to any other city or town whatsoever, although he may not dwell there or within its district, and states publicly in the presence of all: "This is my son, that I have by Such-and-Such a woman,

and I devote him to the service of this Council;" by these words alone he makes him legitimate; provided the son whom he disposes of in this manner gives his consent, and does not oppose him. What is mentioned with regard to a father being able to render a son of this kind legitimate, as above stated, is understood to be in his power to accomplish, whether he has other sons by a lawful wife or not; except where the mistress by whom he had the son is a slave. For he cannot render the son of a female slave legitimate in this way, if he has other legitimate sons, but, if he has none, he then can do this by previously enfranchising her.

LAW VI.

In What Way a Father Can Render His Natural Son Legitimate by His Will.

Where a man has natural children by a mistress, and has no legitimate children, he can make the former legitimate by his will, in the following way, by saying: "I desire that So-and-So, or So-and-So, my children, whom I had by Such-and-Such a woman, be my lawful heirs." For if, after the death of their father, the children take this will and show it to the king, and petition him to confirm it, and to grant the favor their father desired to show them; the king, when he knows that the party who made the will had no other children who were legitimate, should give his consent. From that time forth the said children will inherit the property of their father, and will have the honor of being legitimate.

LAW VII.

In What Way Fathers Can Render Their Children Legitimate by a Written Instrument.

Where a man writes an instrument, or document with his own hand, or orders it to be drawn up by a notary public, and it is confirmed by the testimony of three reliable men, in which document he states that he recognizes a certain child, (mentioning him specifically), as his son, this constitutes a second way in which natural children are made legitimate. In an acknowledgment of this kind, however, he should not state that said child is a natural one, for, if he does, his act will not be valid. Moreover, when anyone has several natural children by one mistress, and recognizes only one of them as his child by means of a document of this kind, and in the way above stated in this law, the other children, by such an acknowledgment, became legitimate and entitled to inherit the property of their father to the same extent as the one in whose name the document is drawn up, although they were not mentioned in the latter. What is stated in this law and in those which precede it is understood to mean that the children who are mentioned in said laws are rendered legitimate to inherit the property of their father and their other relatives, with the exception of any they may have rendered legitimate in the manner previously stated, in the law by which a child may be devoted to the service of the court, of the emperor, or of the king. A child of this kind can inherit the property of his father, but not that of his other relatives if they die intestate.

LAW VIII.

For What Reason Natural Children Can Be Rendered Legitimate.

An official in any city or town, who is one of those who holds an important office for his entire lifetime, who marries a daughter of some person who has said daughter by a mistress, she, by the act of her father, who marries her to a man of this kind, becomes legitimate. Moreover, when the natural son of any

man devotes himself to the service of the emperor or the king, or of any city or town, as stated in the fourth law preceding this one, stating publicly, in the presence of all, that he is the son of Such-and-Such a man (mentioning him by name), who had him by Such-and-Such a servant; and it is a fact that he is the son of the party whom he mentions, he becomes legitimate for this reason; that is, if his father did not have any legitimate children by another woman, for if he did have any, this one would not become legitimate, even if he devotes himself as aforesaid.

LAW IX.

What Benefit and What Advantage Children Derive by Being Legitimate.

Great advantage results to children from legitimacy granted them, for after they become legitimate in any of the ways aforesaid—except where they are made legitimate by the Pope, as stated in the sixth law preceding this one—they can inherit all the property of their fathers, where their fathers have no legitimate children, and where they have any they will inherit their share, just as other issue born of lawful wives; except in the way mentioned in the preceding law, where the rule is established with regard to the son of any man who devotes himself to the service of the court of the emperor, or king, or the council of any city or town. They enjoy another advantage by being made legitimate, for they become eligible to all honors, just as other children who are born of lawful wives do.¹

¹The Avesta required the father of an illegitimate child to provide for the mother until the child was born, after which his obligation was at an end. "He who goes with a maiden who is still with her parents, or no longer with her parents, or who is betrothed, or not betrothed, and makes her pregnant, he must protect her so long until the child is born." (Avesta, Vendidad, Hargard, XV-45, 50.)

As is well known, by both civil and canon law, subsequent marriage of the parents conferred legitimacy upon a child, but the common law absolutely required the latter to be born in wedlock. Even though legitimated by the laws of another country, a child born before marriage could not inherit lands in England. The fact of spurious birth was in ancient times determined by a tribunal having ecclesiastical jurisdiction which corresponded to that of our probate court, and from its decree there was no appeal. "If a man be certified a bastard by the ordinary, he shall be perpetually bound against all the world to avoid a contrary certification, and because it is the highest trial thereof." (Danvers, Abridg. I-732.)

The laws relating to illegitimate children, in force in those European countries which have adhered more closely to the doctrine of the civil law, exhibit a radical difference from that of England and America. "*La recherche de la paternité est interdite.*" Cod. Civ. de Fr. I-VII-3-Art. 360.) *Quando el padre ó la madre hiciere el reconocimiento separadamente, no podrá revelar el nombre de la persona con quien hubiera tenido el hijo, ni expresar ninguna circunstancia por donde pueda ser reconocida* (Cod. Civ. de Esp. V-IV-Art. 132). "*Le indagini sulla paternità non sono ammesse, fuorché nei casi di ratto o di stupro violento, quando il tempo di essi risponda a quello del concepimento.*" (Cod. Civ. d' It. I-VI-3, Art. 189.)

It will be seen from the above that an illegitimate child is literally *filius nullius* under the rules of French, Spanish, and Italian jurisprudence. Not only are prosecutions for bastardy unknown, but a woman is not permitted to reveal the name of the putative father, or even to make a suggestion which may indicate it, and, in Spain, a magistrate who permitted this rule to be violated became liable to a fine of from 125 to 500 pesetas (\$25 to \$100). Such a child is not even entitled to support, unless it has received incontrovertible recognition by one of its parents. While this law fills the foundling hospitals, which have always been a conspicuous institution in the Peninsula, it effectually disposes of one prolific source of blackmail and extortion so common under the Anglo-Saxon system.

In the case where pregnancy is the result of rape or the seduction of a minor, and criminal proceedings are instituted, the defendant, if convicted, must acknowledge the child—unless a great disparity of social position exists between the parties—and, in any event, support it. This is the only instance in which responsibility for illegitimate offspring is recognized by the laws of Spain. It is imposed rather as a penalty than on account of the claim assumed under the common law procedure that the child may become a public charge, which, as a matter of fact, it frequently does, sooner or later, where a gross sum is allowed by our courts practically by way of indemnity. The enactments making bastardy, to all intents and purposes, a felony, which have been adopted by some of the states of the Union, thereby opening the way to the exercise of oppression, revenge, and persecution, and, so far from reforming and benefiting society, encouraging the gratification of the worst passions of human nature, are among the most inexcusable and noxious measures which disgrace the annals of modern legislation.—Ed.

TITLE XVI.

Concerning Adopted Children.

Adopted children are those called, in Latin, *adoptivi*, and are accepted by men as their own, although they are not born in marriage, or in any other way. Wherefore, since in the preceding Titles we spoke of legitimate children, and of all the others which men have naturally, we intend to speak here of those whom they obtain by an agreement made with one another, in accordance with some law or *fuero*. In the first place, we shall show what this adoption is; in how many ways it is made; who has power to adopt; who can be adopted; what force adoption has, and for what reasons it can be set aside.

LAW I.

What Adoption Is and in How Many Ways It Is Accomplished.

Adoptio, in Latin, means adoption, in Castilian. This adoption is a way established by the laws by means of which some men can become the sons of others, without being so naturally. This can be accomplished in two ways, as stated in the Title concerning the office of godfather and of adoption, by means of which impediments arise to marriage, in the law which begins: "Adoption is a kind of relationship." And, for the reason that men sometimes give their legitimate and natural sons to others to be adopted, in an adoption of this kind it is necessary for the person adopted to give his consent, either granting it by words, or by keeping silent and not offering opposition. However, when any one is adopted who has no father, or if he has any, is free from his control, in a case of this kind it is absolutely necessary that the said party publicly give his consent, doing so by words. When the adoption is affected, all those other matters should be observed which we mentioned in the Title concerning the office of the godfather, in the laws which treat of this subject, as well as those which we mention in the laws of this Title.

LAW II.

What Men Have the Power of Adoption.

Every freeman, who has left the control of his father, has the power of adoption. But he who desires to do this must have the following qualifications, namely; he must be eighteen years older than the party whom he desires to adopt, and he must have the natural capacity for procreation, being physically formed for that purpose, and not being of so cold a nature that he is prevented by it. Moreover, no woman has the power of adoption, except in one way, that is where she has lost a son in battle in the service of the king, or in some transaction in which he was connected with some Council; for if, on this account, she desires to adopt some one to take the place of the son she lost, she can do so with the consent of the king, and in no other way. If women could do this, of themselves, it might happen that men would deceive them, or be deceived by them, so that great wrong would result.

LAW III.

What Men Can Adopt Others, Although They Cannot Beget Children.

Ill fortune and serious accident sometimes happen to men, so that they become physically incapable of procreation. This may occur from disease or violence inflicted upon them causing mutilation, or through witchcraft, or some other flagitious action committed against them, or by other casualties which befall men in various ways; and where persons of this kind are naturally capable of procreation, but have

been afterwards prevented by some of the causes aforesaid, we do not think they should suffer loss on this account, but that they ought to have the power of adoption, since nature did not deprive them of virility, but it was the result of violence or accident.

LAW IV.

What Persons Men Can Adopt.

Every boy under seven years of age is called an infant, in Latin, and a child of this kind who has no father cannot be adopted by any one, because he has not sufficient intelligence to consent. A boy who is over seven years of age, and under fourteen, can, however, be adopted with the consent of the king, and in no other way. The reason for this is as follows, namely; a boy of this kind who is under fourteen years of age, and over seven, has no perfect mental capacity, and, on the other hand is not entirely lacking in it, and therefore it is necessary that an adoption of this kind should be perfected by permission of the king, in order that he may take care that the boy is not deceived. However, the king, before he grants permission for the adoption of such a boy, should take into consideration all that follows, namely; who the man is who wishes to adopt him; whether he is rich or poor; whether he is a relative or not; whether he has children who may inherit his property, or whether he is so old that he cannot have any; what kind of a life he leads; and what his reputation is; and he should also ascertain what property the child has. Where all these matters have been considered, and he thinks that the party who desires to adopt the child is influenced by good intentions in doing so, and that it will be for the advantage of the boy, he should grant permission for it to be done. The king, before he grants permission for the adoption of boys under these circumstances, should, however, provide that their property may not be impaired. This ought to be done in this way; he should cause such security to be given by the party who adopts the child that, if the latter dies before he is fourteen years old, he will surrender all his property to the person or persons who are lawfully entitled to it. This is understood to apply to such as would inherit them, or receive them by bequest, if the boy had not been adopted. Security of this kind should be given by a written instrument drawn up by a notary public. Although the king may not order such an instrument to be drawn, it is understood that the party who adopts the child is bound by law to have this done, as aforesaid.

LAW V.

Men Who Were Slaves and Have Been Emancipated Cannot Be Adopted.

All men liberated from slavery by their masters are styled, in Latin, *libertos*, and, in this country, are called enfranchised persons. No one can adopt a person of this kind for the following reason, since, although a master may emancipate his slave, the former always retains an original natural quality, which is indicative of superiority; that is to say, the freedman is always bound to obey him, honor him, and avoid causing him sorrow, and if he violates this rule the master can reduce him to slavery, and therefore no one can adopt him.

LAW VI.

No Man Has Power to Adopt a Boy of Whom He Is the Guardian.

Every man who has charge of a boy and all his property until he reaches the age of fourteen years, is called *tutor*, in Latin. Such a person cannot adopt a boy of this kind, for the reason that he may be suspected of having done so with evil intent, in order to avoid giving an account of his property of which he has charge, and if he did render him such an account, that he would not do so as

faithfully, or in the way that he should. However, after the boy has reached the age of twenty-five years, he can be adopted by his guardian, with the consent of the king, and in no other way; and this is the rule in order to enable the king to provide against his being defrauded by such an adoption as this which we have mentioned.

LAW VII.

What Force Adoption Has, and for What Reason a Person Who Adopts Another Can Liberate the Latter from His Control, and Annul the Adoption.

When one man adopts another who has children and who is not under the control of his father, the adoption has such force that his children, as well as himself and all his property, pass under the control of the party who adopts him, just as if he was his legitimate son; and the party who adopts him cannot remove the latter from his control, except for some lawful reason which he must establish before a judge. This can be done for two reasons. First, when the person adopted is guilty of such wrong, or, of such an act that the party who adopts him is provoked to great rage thereby. Second, where some one else by his will designates as his heir a person adopted in this way, under certain conditions, saying as follows; "I appoint So-and-So my heir, if the party who adopted him removes him from his control." For either of these two reasons the party who adopts can remove the one adopted from his control, but he is bound to restore to him all the property and effects which he had when he came into his power.

LAW VIII.

How Much of the Property of the Party Who Adopted Him the Person Adopted Is Entitled to.

No one should wrongfully, and without reason, remove from his control a person whom he has adopted, nor should he disinherit him. If, however, anyone should violate this rule he is bound to return to the party whom he adopted all the property he possessed when he came under his control, and all the increase which he subsequently obtained, excepting the usufruct which he received from the property of the said adopted person, while the latter was under his control. In addition to this, the person who adopted him should give him the fourth part of all he possesses.

What we have stated in this law and the preceding one, is understood to refer to an adoption made in the way called, in Latin, *arrogatio*, which means one effected by permission of the king; but where it is effected in the other way, called *adoptio*, which means an adoption made by permission of some other judge, the person who adopts the other can remove the latter from his control for any reason or without one, and he will not inherit any of the property of the party whom he adopted. This is the case because the adoptive child in this way should not inherit the property of his adoptive father, even though the latter does not remove him from his control, except where the party adopting him dies intestate.

LAW IX.**What Portion of the Property of His Adoptive Father the Party Who Is Adopted Inherits.**

We have explained in former laws the force of adoption effected by arrogation, and now we desire to show the force which it has when effected by adoption. We decree that where anyone gives his son to be adopted by a man who is not the grandfather, or great-grandfather of the boy on his father's or mother's side, the person adopted in this way shall not pass under the control of the party who adopted him. From an adoption of this kind the following advantage results to the person adopted, namely; he will inherit all the property of his adoptive father, if he dies intestate and has no other children; and if he has any he will share with them, and will have his portion as the rest of them do. Nevertheless, it is not understood that, for this reason, he can inherit the property of the children or of any other relatives of the person who adopted him.

LAW X.**What Rights a Grandson, or Great-Grandson, Acquires in the Property of His Grandfather or Great-Grandfather When He Adopts Him.**

Every man who leaves the control of his father with his consent is said to be emancipated, and if a man of this kind gives his son, who is under his control, to the grandfather of the latter to be adopted, whether he be on the father's or mother's side of the person whom he adopts, the adoptive son will pass absolutely under the control of the party who adopts him, so as to possess all the rights that an actual child should have in the property of his father by whom he was begotten, not only to be brought up by means of said property, but also to inherit it. This is the case on account of two powers of the law which are united in an adoption of this kind; one on account of the descent and lineage by which the party adopted is connected with the one who adopted him; the other through the regulation of the law which conferred upon men the power of adoption. If, however, his father, or great-grandfather removes the boy aforesaid from his control, he will pass back subsequently under that of his father.

TITLE XVII.

Concerning the Authority, of Every Description Whatever, Which Fathers Have Over Their Children.

Fathers have power and authority over their children, both according to natural reason and according to law. First, because they are born of them; second, because they are to inherit their property. Wherefore, since in the preceding Title we treated of legitimate children, and of all others of every description whatsoever, we intend to speak here of the authority which fathers have over them. We shall show what authority is; and in how many ways this word can be understood; how it should be established; and what force it has.

LAW I.

What the Authority Is Which a Father Has Over His Children.

Patria potestas, in Latin, means, in Castilian, the authority which a father has over his children. This authority is a right which those especially enjoy who live under, and are judged by, the ancient laws and regulations made by philosophers, by the command and with the permission of the emperors; and they possess this authority over their children and grandchildren, and all others descended from them in the direct line who are born in lawful wedlock.

LAW II.

Over What Children a Father Does Not Possess This Authority.

Children which men have by concubines, are called natural, as stated in the title which treats of them, and such children are not under the control of their fathers, as legitimate children are; nor are children who are called in Latin *incestuosi*, which means those that men have by their female relatives within the fourth degree; or by women connected with them by affinity; or by those belonging to religious orders. Persons of this kind are not worthy to be called children, because they are begotten in great sin. And although a father may have legitimate sons or grandsons, or great-grandsons who are descended from his sons, under his control, it is not understood by this that the mother can have authority over them, or any other relative on the mother's side. Moreover, we decree that children who are born of daughters should be under control of their fathers, and not under that of their grandfathers on the mother's side.

LAW III.

In How Many Ways the Word Potestas Can Be Understood.

The word called, in Latin, *potestas*, which means authority, in Castilian, can be understood in many ways. Sometimes it signifies the power of the master, as occurs in the authority which a master has over his slave. It also means jurisdiction, and refers to the sovereignty possessed by kings, and other persons who represent them over those subject to their decisions. Again it means the authority which bishops have over their priests, and abbots have over their monks, who are obliged to obey them. Sometimes this word *potestas* means the bond of reverence, subjection, and castigation, which should connect father and son, and of this last mentioned authority the concluding laws of this Title treat.

LAW IV.**How the Authority Which a Father Has Over His Children Can Be Established.**

The authority which a father has over his children is established in four ways. First, by marriage contracted as the Holy Church directs; second, where a dispute arose between certain parties as to whether they were father and son, and final judgment had been rendered between them that they were; third, where a father had liberated his son from his control, and after this the son committed some offense against his father, so that he was compelled to bring him back under his authority; and fourth, by adoption, which means the acceptance of a child as one's own, and this would be the case where the grandfather on the mother's side adopts his grandchild, for under these circumstances, the said grandchild would pass under the control of his grandfather.

LAW V.**What Force the Authority Which a Father Possesses Over His Children Has With Respect to the Property Which Said Children Obtain.**

The earnings obtained by children, while under the control of their fathers, are divided into three different kinds. First, such as children earn by means of the property of their fathers, and gain of this kind is called in Latin *profectitium peculium*; for, although it is obtained in this way or on account of their fathers, it all belongs to their fathers who have control of it. Second, where anyone's child earns something by the labor of its hands, by means of some trade or through any other knowledge which it may possess, or in any other manner; or it acquires a gift left to it by will, or through inheritance from its mother, or from some of its relatives, or by any other means; or where it finds a treasure or other property accidentally.

Any profits made by a child, in any of these ways, and which are not derived from the property of its father or grandfather, should belong to the child who obtained them, and the usufruct of the same to the father during his lifetime, by reason of the authority which he has over said child. This kind of gain is called in Latin, *adventitia*, because it is derived from an exterior source, and not through the property of the father; we decree, however, that the father must protect and preserve this adventitious property belonging to his son, during his whole life, in court as well as out of it. The third kind of property and profit, is that called, in Latin, *castrense vel quasi castrense peculium*, which will be explained hereafter.

LAW VI.**Sons Can Do What They Please With Property Which Is Obtained in a Castle, or in the Army, or at Court, Even Though They May Be Under the Control of Their Father.**

Castra is a Latin word which is understood in three senses. The first and most common is every castle and stronghold surrounded by walls or other fortifications. The second is an army or fortified camp where many persons are assembled, and which is protected by defenses, and, for this reason is called, in Latin, *castra*. The third is the Court of the King, or of some other prince, where many persons are assembled, as around a lord who is a fortress and the bulwark of justice. Wherefore, the profits which men obtain in any of said places derive their name from this Latin word *castra*, and, for this reason, they are called *castrense vel quasi castrense peculium*. And also, since men obtain profits of this kind through great hardship and danger, and because this is done in such noble

places, they become absolutely the property of those who claim them, and enjoy greater exemptions than profits of other kinds; for owners of property of this description can dispose of it as they wish, and neither a father, nor a brother, nor any other relative that they may have has any right to it, or can interfere with it in any way.

LAW VII.

What Property Obtained by Sons Is Called Pegujar.¹

The property acquired by men in any one of the three places mentioned in the preceding law, is called, in Latin, *castrense peculium*, as, for instance, the pay given by lords to their vassals, whether they are knights or any other persons who serve them with horses and arms.

There is another kind of property called, in Latin, *quasi castrense*, which means, in Castilian, profits similar to these others; as, for instance, such as are given to masters of any science whatsoever by the royal treasury, or by some other public office, as pay or salary, and also that which is given to judges and notaries of the king, by reason of their offices, and whatever is given for this reason to any others whomsoever. We decree that every gift of land or other property which is bestowed by the king, or any of the above-mentioned lords, shall be considered *quasi castrense*, for property of this kind belongs absolutely to those who obtain it, as we stated above.

LAW VIII.

For What Reasons a Father Can Sell or Pledge His Child

Where a father complains of great hunger, and is so poor that he cannot have recourse to anything else, he can then sell, or pledge his children in order to have something to buy food with. The reason why he can do this is the following, namely; since neither the father nor his child has any other means to escape death, it is proper that he should sell the latter, and make use of the price, so that neither of them may die. There is another reason for which the father can do this, for, according to the loyal *fuero* of Spain, where a father is besieged in a castle, which he holds of his lord, and is so afflicted with hunger that he has nothing else to eat, he can eat his son without incurring reproach, rather than surrender the castle without the order of his lord. Wherefore, if he can do such a thing for his lord, it is but proper that he should be able to do it for himself. This is another right growing out of the authority which a father possesses over his sons who are under his control, which a mother does not have. This, however, can only be done in such a case where it is publicly understood that the father has no other means to avoid death, if he does not sell or pledge his son.

LAW IX.

How a Son Who Is Sold by His Father Can Be Redeemed and Restored to Liberty.

When a father sells his son through stress of hunger, as stated in the preceding law, and he himself pays for him the price for which he was sold, or someone else does this for him, the son should be restored to freedom. But if the party, after he purchased him, should teach him some trade or science, on account of which he would be worth more than at the time when he bought him, he will not be required to surrender him for merely the price which he

¹ I. e. *peculium*; the full phrase is *pegujar de aluergada*.

paid for him, but he should be given, in addition to said price, as much as reliable and intelligent men truly estimate that his value has been increased on account of what the party had afterwards taught him, or had expended out of his own property in order to have him taught.

LAW X.

A Father Can Ask a Judge to Again Place His Son Under His Control, When He Does Not Have Such Control Over Him, or His Son Is Unwilling to Obey Him.

A father has still another kind of authority over his son. For although some party may keep him in subjection by force, or with the son's consent, the father can claim him in court, and have him placed again under his control. The same rule applies where a son voluntarily wanders over the country and refuses to obey his father; for the father can ask the judge of the district where he is found to place him again under his control, and the judge in the discharge of his official duty is obliged to do so.

LAW XI.

A Son Cannot Bring His Father Into Court.

A son cannot bring his father into court, except on account of profits acquired in the manner called *peculium castrense vel quasi castrense*, as stated above. If, however, a man's son asks the consent of a judge who has general jurisdiction, to bring his father into court before him, on account of some dispute which he has with him, and the judge grants his permission to do so, he can then bring him into court, but in no other way.

Moreover, a son cannot bring any man into court without the order of his father, so long as he remains under his control; on the other hand, no man can bring a son into court without the permission of his father, for, as anything which the son does in court, as where he sues another without the consent of his father, will not be valid; so whatever he does when a suit is brought against him, and his father did not give his consent to it, will not be valid either. Where, however, a son has something to pay to, or some act to perform for another person, his father can be compelled to appear in court, or be responsible for his son.

LAW XII.

For What Reasons a Son Who Is Under the Control of His Father Can Bring Suit, or Answer in Court.

A son who is under the control of his father is called, in Latin, *filius familias*. Although we stated in the preceding law that a person of this kind cannot appear in court to bring a suit, or answer, without the permission of his father; there are some cases in which he should be compelled to do so. Thus, for instance, where his father sends him to school for the purpose of study, or to some other place where he does not live; or where his father sends him to his lord, for the purpose of serving him, or sends him anywhere else; for, if it happens that, while he is traveling in this way, anything should be stolen from him; or any wrong should be done him; or anything be owing to him, he can make his statement in court. On the other hand, we decree, that he shall be required to answer when any persons have complaints to make against him. The reason for which he can bring suit, as aforesaid, and, on the other hand, is required to answer, is the following, namely; if the son were compelled to

go and ask permission of his father to bring suit or answer, either he, or the other party who had a claim against him might, in the meantime, lose his rights, as we stated in the Third Partida in the Title concerning Plaintiffs.¹

¹ The *patria potestas*, or authority of the Roman father over his children, was despotic and absolute. He could put them to death or sell them. All their acquisitions belonged to him. This right was a special privilege attaching to the condition of a Roman citizen, and grew out of the legal fiction by which father and son were regarded as one person, the *unitas personae* of the civil law, and the fact that because the former bestowed life he was entitled to take it, if he so desired. It was of high antiquity, and was incorporated into the Twelve Tables: "*Pater in filium, ex iusto matrimonio natum, ius vitae ac necis eumque tertio vice venum dandi potestatem habeto.*" (Leg. XII. Tab. IV-I.)

This power could be lost by the natural death of either of the parties; by civil death involving the loss of citizenship or liberty; and by the emancipation of the child—as is set forth at length in the text. A peculiarity of the law was that a son, to be absolutely free from the *patria potestas*, must be manumitted three times; for, if sold and emancipated twice, he reverted each time to his father, and it was essential that he be disposed of by sale a third time and set free, before he became *sui juris*, and permanently obtained his liberty.

The authority of the father as the governor of his children is acknowledged by the jurisprudence of all northern civilized nations; and in Spain, France, and Italy the paternal power, while somewhat more extensive and stern in its application than in England and the United States, presents only a faint reminiscence of the irresponsible despotism of Rome.—Ed.

TITLE XVIII

The Reasons Why Parents May Be Deprived of the Authority Which They Have Over Their Children.

Everything in this world is changed in three ways, according to the statements of the wise men of the ancients. First, from non-existence to existence; second, from existence to non-existence; third, by changing from one condition to another, although the condition still exists. The last—when a change is made from one condition to another—occurs in many instances in the transactions of men, and especially respecting the authority which fathers exercise over their children.

Wherefore, in the preceding Title we explained this authority, we intend to speak here for how many reasons, and in how many ways it is abrogated, and we declare that these are four in number, namely; first, by natural death; second, by a sentence of perpetual banishment, called, in Latin, *mors civilis*; third, by reason of some high dignity to which a son attains; fourth, when a factor removes a son from his control, with his consent, which is called, in Latin, *emancipatio*. Of each of these we shall speak in its place, as is proper.

LAW I.

How the Authority Which a Father Exercises Over His Son Is Abrogated by Natural Death.

The authority which a father exercises over his son is abrogated by natural death, since, as soon as his father dies, his son becomes his own master. This, however, ought to be understood in the following way; that is, where the party who died is no longer under the control of his own father; since, if he were not free from his control, even though he should die, his sons would remain under the power of their grandfather, just as they were while their father was living. But where anyone who has sons, or grandsons, under his control dies, as soon as he is dead the sons become their own masters, and the grandsons of the deceased pass under the control of their father.

LAW II.

A Father Is Deprived of the Authority Which He Exercises Over His Son by a Sentence of Banishment, Called, in Latin, *Mors Civilis*.

One punishment established by law against persons who commit such an offense that they deserve to receive it as a sentence, is called civil death, and such civil death is divided into two kinds. One of these is where a person is sentenced for life to work on the buildings of the king; as, for instance, to perform labor on his castles; or to dig sand, or carry it on his shoulders; or to dig metals from mines; or perpetually to serve those who dig or carry or are engaged in other work of this kind, and such a person is called a penal slave. The other kind of civil death is where some person is banished for life, and is sent to some island, or some other secure place from which he can never escape, and also is deprived of all his property; and a person of this kind is called, in Latin, *deportatus*. Whenever anyone is sentenced in either of the ways above mentioned, or is condemned to this death which is called civil, the authority which he had over his children is abrogated by such a sentence, and they, for this reason, are freed from his control. And although a person who is deported may not be actually dead, the laws consider that he is so, as far as the honor, the nobility, and the affairs of this world are concerned; and because of this he has no power to make a will, and if he had previously made one it would not be valid.

LAW III.

By What Kind of Banishment Sons Are Not Liberated from the Control of their Father.

Relegatus, in Latin means, in Castilian, a man condemned or subjected to punishment for some offense which he committed, and who is ordered to go and dwell in some place forever, or for a specified time, but who is not deprived of his property. A person to whom this name is applied, although he may be, as it were, banished, nevertheless, does not lose the authority which he has over his children; nor over his property; nor lose his rank or liberty nor is he on this account, prevented from making a will; nor should any other punishment be inflicted upon him while he suffers banishment of this kind, except where the official who sentences him directs that he shall forfeit some particular portion of his possessions.

He should not, moreover, leave the place to which he is sent without the order of the judge who sentenced him, and the laws granted to a person of this kind all of the above-mentioned privileges for the reason that, although he is sentenced to this punishment, he is not civilly dead, as we stated of the others.

LAW IV.

Fathers Who Are Outlawed Lose Their Power Over Their Children.

Men who are proclaimed outlaws, and are proscribed on account of some offense of which they are guilty, are called *banniti*, in Latin. This happens when persons summoned to come and do justice to those who complain of them on account of some flagitious action, or some offense of which they are accused, are unwilling to appear at the appointed time, or refuse to make amends for the wrong that they have done. For this reason judges order proclamation to be made, forbidding said parties to enter the city or town of which they are residents, or the country to which they belong; and, sometimes, they inflict a still greater penalty upon them, for they order all their property, or some portion of it, to be taken from them according to the nature of the offense which they have committed. Persons of this kind who are designated fugitives from justice and, are called, in Spanish, *encartados*, are sometimes classed with those who are deported, and sometimes with those who are banished; for where they are subjected to perpetual exile and deprived of their property, they are classed with those who are deported; and where they are exiled for a certain time and not forever, and are not deprived of their property, they are classed with those who are banished.

LAW V.

What Judges Can Pass a Sentence of Deportation or Banishment.

It is not the part of the duties of, nor is it permitted to, every judge to impose the penalty of banishment, called deportation; for there are certain persons who are fitted to inflict a sentence of this kind, and they are the following, namely: an emperor, a king, or their representatives who nominally occupy their places; or those styled praetorian prefects, prefects of the city, or Roman senators. Where anyone else imposes a sentence of this kind it will not be valid and should not be executed, except where the prince consents to it and designates the place of banishment; or where any of the persons aforesaid, who have the same authority, do so. But the other sentence called *relegatio*, can be passed by every judge who has jurisdiction to punish malefactors by death or loss of limb, and for what crimes these two sentences, called *deportatio* and *relegatio*, should be imposed, is fully stated in the Seventh Partida of this book, in the laws treating of Crimes.

LAW VI.

Through What Offense a Father Loses the Authority Which He Has Over His Sons.

One kind of sin called, in Latin, *incestus*—which means where some man has children by a lawful wife, and she dies, and, after her death, he knowingly marries some relative of hers within the fourth degree whom he has no legal right to marry, or marries some woman belonging to a religious order—causes a father who marries in this way to lose his authority over his sons, and on this account they are freed from his control.

LAW VII.

Through the Attainment of What Dignities a Son Is Freed from the Control of His Father.

There are twelve kinds of dignities, especially indicated, by means of any one of which a son becomes free from the control of his father. The first is when the emperor, or king, chooses anyone as his counsellor; for, as soon as this selection is made and the emperor or king makes known his choice to the party selected, either informing him verbally or announcing it to him by some messenger, or by letter, he is, for this reason, freed from the power of his father. A counsellor of this kind, called, in Latin, *patricius*, means the father of the prince. This name is assumed on account of his resemblance to the natural father, for, as a parent is induced by nature to advise his son faithfully, considering his advantage and his honor more than anything else; so he by whose counsel the prince is directed should love him and advise him loyally, and promote the advantage and honor of his lord above everything else in the world, not permitting love, hate, benefit, or injury to induce him to swerve from this. This he should do without any flattery, and not considering whether his advice may grieve or please him, just as a father does not consider these things when he advises his son. The counsellor of a prince enjoys another great honor, in addition to the one we mentioned above where he is spoken of as a father, for the name of a counsellor of this kind is inscribed upon the crown of the emperor, in order that men may know by whose advice he is guided.

LAW VIII.

Anyone Who Is Chosen Proconsul, or Praetorian Prefect Is Freed from the Control of His Father.

The office of proconsul is the second one by the attainment of which a son is removed from the power of his father, and it means the general judge of the Court of the Emperor or the King, who is selected and sent to maintain the *fueros* and laws in any province. The third is when anyone is chosen to be praetorian prefect, which means the chief *adelantado* of the court who is appointed in the place of the king and is superior to all other officials in judging and deciding the suits of the kingdom, as well as the appeals of the judges of the court which are brought before him. His office is one of such exalted dignity that, as no appeal can be taken from a decision given by the emperor or the king, so none can be taken from one given by him, but parties may petition him to review or correct his decision if he is willing to do so.

LAW IX.**What Is the Meaning of the Terms Prefect of the City, and Prefect of the East, and How Anyone Chosen for Either of These Offices Is Removed from the Control of His Father.**

Praefectus urbis means, in Castilian, the chief judge of the city of Rome or any other city whatsoever which is the capital of a kingdom. This is the fourth high office by means of which a son is released from the control of his father. An officer of this kind can take judicial cognizance of all cases in the city and its environs, not only by deciding suits, but also executing sentences of death, or of loss of limb upon those who commit such acts as are deserving of these penalties. The fifth high office by means of which a man is removed from the control of his father, is when anyone is selected as prefect of the east, which means chief magistrate of the entire eastern country.

LAW X.**What Questor Means, and How an Official of This Kind Is Removed from the Control of His Father.**

The sixth high office by which a man is removed from the control of his father is that of questor, which means a man whose duty it is to collect all taxes and royal revenues, not as a landlord, but as an officer of the King's Court, and in whom he reposes great confidence. There is another high office also called questor, which means a person whose duty it is to read to the emperor or king the secret letters which are sent to him and those which he sends. It is also his duty to read before him laws recently made, before they are published.

LAW XI.**What Master of Cavalry Means, and in What Way a Man Is Removed from the Control of His Father by Reason of Said Office.**

The seventh high office by which a man is removed from the control of his father is when anyone is chosen master of cavalry, which means a man who is appointed commander or chief of the knights of the emperor or king, and is called, in Castilian, *alferes*. It is the duty of this officer to bear the standard of the king when he goes into battle, and he has authority to sit in judgment upon the knights in all matters which arise among them by reason of knighthood; as, for instance, where they sell, pledge, or injure their horses or arms. He has also authority to decide cases relating to debts which may arise among them; and has authority to use force, and expel from the order of knighthood all such as give cause for it, where they disobey the ordinances and commands given them, which relate to knighthood. Although he has power to do all the things aforesaid, nevertheless, he cannot condemn any person to death or to the loss of limb, for anything he may say or do.

LAW XII.**What Patronus Fisci et Princeps Agentium in Rebus Mean, and How Anyone Chosen for These Offices, Is Removed from the Control of His Father.**

Patronus fisci means, in Castilian, a man appointed to argue and defend in court all cases and rights in which the royal treasury is interested. This is the eighth high office by means of which a son is removed from the control of his father. The ninth high office by means of which a son is removed from the control of his father is called, in Latin, *princeps agentium in rebus*, which means, in Castilian, steward, or purveyor of the Court of the King or of his family. To this officer all those who collect or disburse the royal revenues should account.

LAW XIII.

What Magister Sacri Scrinii Libellorum Means, and How an Official of This Kind Is Removed from the Control of His Father.

Magister sacri scrinii libellorum is the tenth high office by means of which a son is removed from the control of his father, and it means chancellor, in Castilian. He has charge of the seals of the emperor or king, and of the chests containing the documents of the Chancery. He should see and examine all documents which come to the Chancery before they are sealed, and those which he thinks are legal he should order to be sealed and the others to be cancelled. An officer of this kind is called a chancellor because it is his duty to cancel and amend documents brought to the Chancery, as already stated. The notaries and clerks of the court should obey him. A chancellor, however, has, of himself, no authority to grant a privilege or letter of grace, or to dictate one, or direct this to be done, without an order of the king; as we stated in the Third Partida in the Title concerning Written Instruments, in the laws which treat of this subject.

LAW XIV.

What Magister Sacri Scrinii Memoriae Principis Means, and How a Man Is Removed from the Control of His Father by Reason of an Office of this Kind.

The eleventh high office by means of which a son is removed from the control of his father, is called, in Latin, *magister sacri scrinii memoriae principis*, which means the notary of the emperor or king who causes memoranda and records to be made of privileges and documents which are issued from the court, as well as those which are sent there which the king orders to be recorded, in order that they may be remembered, if it becomes necessary. An officer of this kind should also have notes taken in all important cases decided before the king or the praetorian prefect. The twelfth high office is when anyone is chosen bishop. By means of four of these twelve exalted dignities aforesaid sons are removed from the control of their fathers solely by being selected for them, by receiving the commissions granting them, and by giving their consent, although they may not perform the duties pertaining to the high office to which they are chosen, and they are the following, namely; *patricius*, consul, praetorian prefect, and bishop. But this is not the case with the other offices, unless the duties pertaining to them and for which the parties were chosen have previously been performed. In the Second Partida of this book in the laws treating of this subject, we describe fully each of the officials aforesaid, who are there alluded to by different names according to the custom of Spain.

LAW XV.

In What Way a Child Is Removed from the Control of His Father by Means of Emancipation.

Emancipation is another way, in addition to those we mentioned above, by which children are removed from the control of their fathers. This is accomplished in the following manner. The father should appear, in company with the child whom he desires to liberate from his authority, before a judge appointed to hear all cases, and who is styled in Latin, *ordinarius*. Both of them having appeared before the judge, the father should say that he releases his child from his authority, and the latter should give his consent to it; and, in consideration of liberating him from his control, the father can retain for himself half the usufruct of the adventitious property of his said child. It is understood that he is to have the said half as compensation for liberating him from his authority, unless he specifically releases him from it.

LAW XVI.**In What Way Fathers Can Emancipate Their Children When They Are Not Present, or Are Under Seven Years of Age.**

When a father desires to emancipate one of his sons who is not present or is under seven years of age, he has no authority to do so unless he petitions the king to grant him permission. If the king gives him permission, he should communicate the fact, in writing, to the ordinary judge of the district, where the father is; stating that he confers upon him power to emancipate his son, mentioning him specifically by name in his letter, and also stating in it whether he is under seven years of age, or is somewhere else, so that he cannot be present. The father should afterwards appear before the judge and show him the letter in which the king granted him this authority, as aforesaid, and should state how he desires to make use of it. He can then emancipate his son, and the emancipation will be valid; where, however, the person whom he emancipated and who is not present is over seven years of age, it will be necessary for him to give his consent in court, when he comes.

LAW XVII.**Emancipation Should Be Effected With the Consent of Both Father and Child.**

The father should not be forced to emancipate his child, any more than compulsion should be employed against the child in order to induce it to accept the emancipation; but this ought to be done with the consent of both of them without any coercion whatever. It should, however, be done publicly, which means before the judge in whose presence both parties, the father as well as the child, are obliged to agree to it. The father must order an instrument drawn up stating that he liberates his child from his authority, in order that the emancipation may be proved and no doubt arise concerning the same.

LAW XVIII.**For What Reason Fathers Can Be Compelled to Free Their Children from Their Control.**

We find that there are four reasons for which a father can be compelled to liberate his child from his control, although we stated in the preceding laws that he could not be forced to do this. First, when a father punishes his child with great cruelty, and without the pity which he should naturally feel, for such punishment should be moderate and merciful. Second, when a father is guilty of such extreme wickedness that he opens a way to his daughters to be bad women, by compelling them to commit this great sin. The third is, when a man bequeaths property to another by will, under the condition that, in consideration of it he will emancipate his children; for if he accepts what is bequeathed in this way, he is bound to emancipate them, and if he refuses he can be forced to do so. Fourth, when anyone adopts his stepchild while it is under fourteen years of age, for if such a child, after it has arrived at this age, should be maltreated by its stepfather, either through wasting its property, or maltreating it in any other way whatever, it should apply to the judge, and if the latter finds that its statements are true, he should compel its stepfather to emancipate it.

LAW XIX.**A Father Can Again Reduce His Child Under His Authority After It Has Been Emancipated, If It Should Prove Disobedient.**

Those are called *ingrati* who are not grateful for the benefits they receive, which means, in Castilian, persons that are thankless. There are some such persons who, instead of serving those from whom they receive favors and showing gratitude for them, maliciously commit offenses against them, subjecting them to many annoyances by word and deed. This is one of the greatest abominations which a man can be guilty of; and, for this reason, if a child who has been emancipated commits an offense of this kind against his or her father, by wickedly causing him dishonor by word or deed, he or she should, on account of this, be again placed in his power.

TITLE XIX.

How Parents Should Bring Up Their Children, and How Children Should Have Consideration for Their Parents Whenever It Is Necessary.

Pity and the law of nature should influence parents in bringing up their children to give them, and do for them, whatever is necessary, according to their ability; and this they should be induced to do through natural obligation, for, if animals, which are not endowed with reasonable intelligence, have natural affection and rear their young, much more ought men who are possessed of understanding and feeling, above all other things, to do this. Moreover, children are naturally bound to love and fear their parents and render them honor, service, and assistance in every way in which they can do so.

Since in the two Titles preceding this, we spoke of the authority which fathers have over their children and for what reasons they can be deprived of it, we intend to speak here of the way in which parents should bring up their children. In the first place we shall explain what this bringing up is; what force it has; and for what reasons and in what way parents are obliged to do this for their children, although they may not be willing; who are required to do it; and why parents may be excused from rearing their children if they do not desire to.

LAW I.

What the Nurture of Children Is, and What Force It Has.

Nurture is one of the most important good actions which one person can perform for another, because every man is induced to do this through the great affection which he entertains toward the child whom he brings up, whether the latter is his own, or that of a stranger. This nurture has great force, and especially that which a father gives his child, for although he may have natural love for it, because it was begotten by him, his affection for it increases much more by reason of the nurture which he affords it; and the child is also bound the more to love and obey its father, because he was willing to endure the trouble of bringing it up, rather than commit it to someone else.

LAW II.

For What Reasons, and in What Way, Parents Are Bound to Bring Up Their Children, Although They May Not Desire to.

The reasons why fathers and mothers are required to rear their children are clear and manifest. The first is, the natural impulse by which all beings in the world are induced to rear and protect whatever is born of them. The second is, on account of the natural affection which they have for their offspring. The third is, because all temporal and spiritual laws are in accordance upon this point. The way in which parents should bring up their children and provide them with whatever they need, although they may not desire to do so, is the following, namely; they should give them wherewith to eat, drink, and be clothed, shoes to wear, and a place to dwell, and everything else which they require without which human beings cannot exist. Every man should do this according to his property and his ability, always paying due regard to the person who is entitled to receive these things, as well as the way in which it should be done; and where anyone violates this regulation the judge of the district can employ compulsion against him by causing him to be arrested, or by using other means to force him to comply with the law as aforesaid. We

also decree that, so long as a father brings up and provides for his child, if the latter contracts a debt which is not to the advantage of his father, or does so without his order, the father is not bound to pay said debt. Moreover, we decree that children shall assist in providing for their parents, if it should become necessary and they are able to do so, just as parents are required to do these things for them.

LAW III.

Whether Children Should Be in Charge of Their Father or Their Mother, in Order to Be Supported and Brought Up.

Mothers should nourish and bring up their children while they are under three years of age, and their fathers those who have passed that age. Where, however, the mother is so poor that she cannot rear them, the father is obliged to furnish her with what is necessary for that purpose. When a separation takes place for any lawful reason, the parent who is at fault is required to provide out of his or her own property, if he or she is wealthy, the means to support the child; whether they are over or under three years of age, and the other party who was not to blame should bring them up and have charge of them. But where the mother has control of them for some reason like that aforesaid, and marries, she should not then have the care of them, nor is the father bound to give her any property for this purpose, but he should take charge of the children and rear them if he has the means.

LAW IV.

For What Reason a Father or Mother Is Excused from Bringing Up Their Children Whom They Are Bound to Provide For.

Poverty frequently excuses men from doing things which they are legally required to do. For this reason, although we stated in the preceding law that the party who was at fault when the marriage was dissolved is bound to give to the other parent, out of his or her own property, the means to bring up the children born to both of them; there is a reason why this should not be so, as where one of them is poor and the other rich, then the one who has the means should provide for the nurture of the children; and where both father and mother are so poor that they cannot support their offspring and the grandfather or the great-grandfather of the latter is rich, either of them is bound to rear the said children for the following reason; because, just as a child is required to provide for its father or mother, if they become poor, as well as for its grandfather and grandmother and great-grandfathers and great-grandmothers in the direct ascending line; so, on the other hand, each of the latter is required to provide for the aforesaid children who descend from them in the direct line, when it becomes necessary.

LAW V.

Which Children Parents Are Bound to Bring Up, and Which Ones They Are Not.

Men have children by their lawful wives and sometimes by women who are not their wives, and a distinction exists in rearing their offspring; for relatives in the direct ascending line of the father as well as the mother are bound to support the children who are born of women whom men have lawfully married. The same rule applies to those who are born of women openly kept by men as mistresses instead of wives, where no impediment of relation-

ship, of a religious order, or of marriage exists between them. But those who are born of other women, as, for instance, in adultery, incest, or other fornications, relatives in the direct ascending line of the father are not bound to provide for, unless they desire to do so, except where they act through courtesy, being naturally induced to bring them up and to show them kindness as they would do to strangers, to keep them from perishing. But the mother, as well as the relatives in the direct ascending line of the latter, are obliged to provide for such children, when they have the means. This is the case because the mother is always sure that a child born of her is her own, and the father is not, so far as children born of women of this kind are concerned.

LAW VI.

For What Reasons Parents Can Be Excused from Providing for Their Children If They Do Not Desire to, and When Children Are Not Required to Provide for Their Parents.

A uniform law applies to parents as well as to children, so that when either of them commits an offence against one of the others, being such as men call, in Latin, *ingrati*—which means that a man is ungrateful to another for some kindness which he receives, or has received from him—for a reason of this kind a father is not bound to bring up his son, or a son to provide for his father. This would be the case where one accuses the other, or attempts to fix a crime upon him for which he would deserve death, dishonor, or loss of property. Moreover, when a son owns sufficient property to live upon, or has a trade by the use of which he can support himself without inconvenience, the father is not then required to support him. We decree that the same rule shall apply to a child, in its treatment of its father; and, moreover, when anyone dies who was bound to provide for his father, and in his will makes a stranger his heir, disinheriting his father for some lawful reason, the said heir is not bound to provide for the father of the deceased, unless he is reduced to extreme poverty.

LAW VII.

What Should Be Done When a Son Asks His Father to Provide for Him, and He Denies that He Is His Son.

Where anyone alleges that he is the son of another person, and demands that the latter support him and provide him with the necessities of life, it may happen that the latter will deny that he is his son in order to avoid supporting him, and may tell him that he is in fact not his son. Wherefore, when a doubt of this kind arises, the judge of this district, by virtue of his office should positively, and without delay, ascertain whether he is the son of the party he claims to be, or not, and he should do this without observing the form of proceedings which should be followed in other cases. This should be ascertained through the common report of the persons in that locality, or in any other way by which it can be done, or by the oath of the party who claims to be his son. If the judge should determine by any evidence that he is his son, he should order the other party to bring him up and provide for him; but although he may order a person of this kind to be provided for, as aforesaid, either party has the right to prove whether one is the son of the other, or not.

TITLE XX.

Concerning Persons Whom a Man Brings Up in His House Though They Are Not His Children.

The nurture of others is the way by which men obtain love, and is an obligation both by nature and custom due from those with whom they are brought up; as, for instance, that which exists with fathers and lords, that they may be served and protected by others. Wherefore, in the preceding Title we explained how fathers should bring up their children, we intend to speak here of other persons whom a man brings up, for the reason we mentioned above. In the first place we shall state what nurture is; how many kinds there are; whence the name is derived; what difference there is between nurture and support; and what obligations exist between foster-children and those who rear them.

LAW I.

What Nurture Is and How Many Kinds There Are.

We explained in the second law of the preceding Title what nurture is, and there are two kinds. The first is the making of something out of nothing, and this belongs to God alone. The second is to create one thing out of another, this men can accomplish through the wisdom and power that they derived from God, and they are induced to do this for one of the three following reasons. First, from a natural obligation; and this influences parents in the treatment of their children, of which we spoke in the preceding Title. Second, through kindness and courtesy; as where the child of some stranger, with whom no relationship exists, is brought up. Third, through pity; as where a child who has been abandoned or driven away, is reared.

LAW II.

Whence the Word Nurture Was Derived, and What Difference There Is Between Nurture and Support.

The word nurtured, *criado*, is derived from the Latin word, *creare*, which means to form and care for some diminutive being, so that it may be placed in a condition where it can support itself. And, as the wise men of the ancients declared, a distinction exists between nurture and nursing, for it is support where anyone provides for some one whom he brings up, giving him out of his own property everything necessary to enable him to live, and keeping him in his house and family. Nurture and instruction are what tutors bestow upon those in their charge, and masters upon their scholars whom they instruct in a science or trade, teaching them good habits, and punishing them for the faults they commit. In return for such attention, those who are cared for in this way are accustomed to provide for their tutors and masters, giving them whatever they require as great lords and other men do, and bestowing donations upon them according to their power, or in compliance with the custom of the country.

LAW III.

What Obligations Exists Between Those Reared and Those Rearing Them.

A person who has reared someone who had been abandoned by his father or mother, or his lord, or any other person whomsoever, might, after he had conferred this benefit upon him, desire to retain some authority over him, wishing to make use of his person in the way of servitude, or he might

demand the expenses incurred by him on account of his support; and therefore we decree that this cannot be done; for one party who brings up another retains no right to his person or his property and is entitled to no service from him. Where, however, one man rears another, and, at the time when he begins to do this, states publicly in his presence that he wishes to recover from him the expenses incurred for his support; he has then a right to claim them, and the latter should reimburse him if he has the power to do so. But he is not bound to do anything else through compulsion, with the exception that he should honor the party who brought him up, in all things, and have reverence for him just as he would have for his father; and he cannot bring an accusation against him, or do anything else, in any way, by which he may lose life or limb, become infamous, or be deprived of the greater part of his property; unless the accusation relates to something affecting the person of the king, and he who brought it was induced to do so to protect the sovereign or the kingdom from danger.

LAW IV.

Concerning Children Abandoned at the Doors of Churches and in Other Places, and Whose Fathers and Masters that Abandon Them Cannot Claim Them After They Have Been Reared.

A father or a mother is sometimes impelled by shame, cruelty, or wickedness, to abandon his or her little children, leaving them at the doors of churches, hospitals, and other places, and after they have abandoned them in this way good men and women who find them, moved by compassion, take them away and bring them up, or give them to someone else for this purpose. For this reason we decree that wherever a father or a mother claims a son or daughter of this kind, after they have abandoned it, and desire to obtain control of it again, they cannot do so; because a person loses the authority which he had over such a child, except where someone else abandoned it without his order or knowledge. Where children are claimed as soon as this is known, we decree that they shall be surrendered to their parents, the father or mother reimbursing the parties who brought up said children for their expenses, if they desire to claim them; but where those who rear children of this kind are influenced to do so through the love of God, and with the intention of not accepting any other reward, their parents are not bound to return to them the expenses incurred for their support by those who brought them up.¹

Where a master desires to claim a slave whom he has abandoned in this way, he cannot do so, because the said slave becomes free by the very act of such an abandonment. Moreover, by such an abandonment a master loses all rights in any person whom he has enfranchised, so that, from that time forth, he cannot assert any such rights to him.

¹ The inflexible justice of the Visigothic Code compelled the unnatural father of an abandoned child to reimburse whomsoever, from motives of pity, cared for and reared it; and, where his means were not sufficient to do so, to serve as a slave the infant whom he had so cruelly deserted. The greatest latitude was permitted to magistrates in the punishment of such a crime. "*Hoc vero facinus, quum fuerit ubicunque commissum, iudicibus et accusare liceat, et damnare.*" (For. Jud. IV-IV-1.) Where free-born parents subsequently desire to claim such a child, they were required to give a slave, or the price of one, by way of remuneration, and in case of refusal were sentenced to perpetual exile.—Ed.

TITLE XXI.

Concerning Slaves.

Slaves are another kind of men who are under obligations to those to whom they belong, by reason of the authority they have over them. Wherefore, since in the preceding Title, we spoke of the retainers that a man brings up in his house, who are free, we intend to speak here of slaves because they belong to the household. In the first place we shall explain what servitude is; where it originated and how many kinds there are; under what circumstances a slave is bound to protect his master from injury; and what authority masters have over their slaves.

LAW I.

What Servitude Is, Whence It Derived Its Name, and How Many Kinds There Are.

Servitude is an agreement and regulation which people established in ancient times, by means of which men who were originally free became slaves and were subjected to the authority of others, contrary to natural reason. The slave derived his name from a word called in Latin, *servare*, which means, in Castilian, to preserve. This preservation was established by the emperors, for, in ancient times, all captives were put to death. The emperors, however, considered it proper, and ordered that they should not be killed, but that they should be preserved, and use made of them.

There are three kinds of slaves, the first is those taken captive in war who are enemies of the faith; the second, those born of female slaves; the third, when a person is free and allows himself to be sold. Five things are necessary, in the case of the third. First, the party must voluntarily consent to be sold; second, he must receive a part of the price; third, he must know that he is free; fourth, the party who purchases him must believe that he is a slave; fifth, he who permits himself to be sold must be more than twenty years of age.

LAW II.

To What Conditions Those Belong Who Are Born of a Female Slave and a Freeman.

Persons born of a father who is free and a mother who is a slave are slaves, because they follow the condition of the mother, as respects both slavery and freedom. But where a woman of this kind, while pregnant, is set free, her child will be free also, although the said child may be born only an hour, or even less, after she was liberated. And, even if the mother should be subsequently returned to slavery, her child will always remain free, on account of the time during which his mother bore him after she was liberated, whether this be much, or little. Children born of a free mother and a father who is a slave are free, because they always follow the condition of the mother, as aforesaid. Although we stated above that children follow the condition of the mother, nevertheless, children who are born of a father and mother who are free, should follow the condition of the father, so far as secular honors and *fueros* are concerned.

LAW III.**The Sons of Priests, Who Are in Sacred Orders, Should Be Slaves of the Church.**

There are certain contingencies and reasons on account of which persons who are born of a father and mother who are free, become slaves, and one of these is where a priest who has received Holy Orders marries a free woman, in the same manner as laymen should marry according to law; for children born to women of this kind will be slaves of the church in which the priests who contracted such a marriage has a benefice. Slaves of this kind should not, however, be sold like other slaves, but are always bound to serve*that church. Children of this kind labor under still another impediment on account of the fault which their father committed in marrying in this way, for they cannot inherit the property of their father, although they have a right to inherit that of their mother.

LAW IV.**Christians Who Provide the Enemies of the Faith with Iron, Wood, Arms, or Ships, Become Slaves by Reason of Such Acts.**

There are some wicked Christians who give assistance or advice to the Moors, who are the enemies of the faith; as, for instance, when they give, or sell them arms of wood and iron, or galleys or ships already built, or the materials with which to build them; and this also includes those who pilot or navigate their ships in order to inflict injury upon Christians; and those who give or sell them wood for the purpose of making battering-rams or other engines. And, for the reason that such persons are guilty of great wickedness, the Holy Church deemed it proper that whoever could seize individuals guilty of acts of this kind, might reduce them to slavery, and sell them if they desired to do so, or make use of them as they would of their own slaves. In addition to this, such persons are excommunicated solely on account of their deeds, as stated in the Title concerning Excommunications, and they should lose everything they have, and become the property of the king.

LAW V.**Under What Circumstances a Slave Is Bound to Protect His Master from Injury.**

Every slave is bound to protect his master from injury and dishonor, as far as he can, or knows how to do so, and he is obliged to obey him, and contribute to his honor and advantage in every way. Not only is a slave under obligations—with respect to the matters aforesaid—to his master, but also to the wife and children of the latter; and if they have need of his help, where anyone desires to kill or dishonor them, he should run to their assistance, and give up his life for them to prevent them from suffering death or disgrace. A slave should do this well and faithfully, and he cannot excuse himself in any way for not doing so, if he has the power, except when he is ill so that he cannot perform his duty; or where he has been taken captive, or is imprisoned, or is so distant from the place that he cannot by any means go and render assistance. Where a slave wounds or kills anyone while defending his master from danger of death, he should not be liable to any penalty.

LAW VI.**What Authority Masters Have Over Their Slaves.**

A master has complete authority over his slave to dispose of him as he pleases. Nevertheless, he should not kill or wound him, although he may give him cause for it, except by order of the judge of the district; nor should he strike him in a way contrary to natural reason, or put him to death by starvation; except where he finds him with his wife or his daughter, or where he commits some other offence of this kind, for then he has certainly a right to kill him. We also decree that, where a man is so cruel to his slaves as to kill them by starvation, or to wound or injure them so seriously that they cannot endure it, in cases of this kind said slaves can complain to the judge; and the latter in the discharge of his official duty should investigate and ascertain whether the charge is true, and if he finds that it is, he should sell the slaves, and give the price of them to their master; and he should do this in such a way that they never can be again placed in the power, or under the authority of the party through whose fault they were sold.

LAW VII.**Any Profits Obtained by Slaves Will Belong to Their Masters.**

All the earnings obtained by a slave, no matter how he obtains them, will belong to his master. We also decree that any property left by will to a slave can also be claimed by his master, just as if it had been bequeathed to himself. Moreover, we decree that where anyone places his slave in a shop, a ship, or in any other place, ordering him to follow a trade or conduct a business, all contracts entered into by such a slave, no matter with whom he makes them, which relate to the trade or business in which his master establishes him, the latter is bound to keep and perform, just as if he himself had made them.

LAW VIII.**Neither a Jew Nor a Moor Can Hold a Christian as a Slave.**

Neither a Jew, a Moor, a heretic, nor anyone else who does not acknowledge our religion, can hold a Christian as a slave. Anyone who violates this law, by knowingly holding a Christian in servitude, shall lose his life on that account, and forfeit all his property to the king. We also decree that if any of the persons aforesaid has a slave that does not acknowledge our religion, and said slave becomes a Christian, the latter will be free for that reason, as soon as he is baptized and accepts our faith; nor will he be required to pay anything for himself to the party to whom he belonged before he became a Christian; and even though the party who was his master may subsequently become a Christian, he will retain no rights in said person who was his slave and became a Christian before he did.

This is understood to apply where a Jew, or a Moor purchases a slave who becomes a Christian, with the intention of making use of his services and not for the purpose of disposing of him in trade. If, however, he buys him with the intention of selling him, he should do so within three months; and if, before the said three months have expired, and while his master was making an attempt to sell him, he should become a Christian, the said Jew

or Moor should not, for that reason, lose all the price he paid for him, but we decree that the slave shall be required to pay for himself, or the party who caused him to become a Christian should pay for him, twelve maravedis of the money current in that locality; and where he has not the means to pay them, he should give his services instead of them, not as a slave but as a free-man, until he is entitled to that amount. If he should not be sold within the three months aforesaid, the party who was his master will retain no rights in him, even though he may subsequently become a Christian.¹

¹ The institution of slavery, with the various questions arising from it, occupied a very important place in the jurisprudence of antiquity. A slave ordinarily had no legal rights whatever. With the Hebrews, no one of that race could remain a slave longer than six years. (Exodus XXI-2-6; Deuteronomy XV-12-17.) This differed from the rule of Moslem Law which declared that persons of these creeds could not, under any circumstances, hold their co-religionists in bondage.

Among the Romans, the *familia* included slaves, over whom the master had the power of life and death. During the Empire the numbers belonging to the households of wealthy patricians were enormous, causing at various times serious apprehensions as to the safety of the state. The insolence of the Roman slave was proverbial. In time, the sale of slaves grew more and more restricted, and during the reign of Justinian they became, like the villains regardant of the Middle Ages, attached to the soil which could not be alienated without them. Through motives of humanity, the law also prohibited the separation of relatives. "*Plerumque propter morbosa mancipia etiam non morbosa redhibentur si separari non possint sine magno incommodo vel ad pietatis offensam, Quod et in fratribus, et in personis contubernio sibi coniunctis observari oportet.*" (Corp. Jur. Civ. Dig. XXI-1-35.) The marriage of slaves to one another, as previously stated, was not recognized. A woman of noble rank who had carnal intercourse with a slave was reduced to servitude by way of penalty.

The Gentoo Code provided that where a free woman married a slave she became the property of his master; which was also the case where, being in slavery, her own master consented to such a marriage. Contrary to the laws of most nations, a freeman could sell himself, and, this once done, his status became the same as that of one born in bondage. A slave had a right to any property he had accumulated for the purpose of purchasing his freedom, as well as to what was given him as presents. Where a man without legitimate issue has a child by a female slave, the latter, with her offspring, became *ipso facto*, free thereafter. (Gentoo Cod. VIII-II-III.)

By the Moslem law, a slave is rather the companion than the bondman of his master. The Koran authorizes cohabitation with slaves. (Sura, IV-29.) Their condition was greatly improved by Mohammed, who enjoined his followers to treat them with kindness and justice, as is shown by one of his many sayings on this subject: "That man who behaves ill to his slave shall not enter Paradise."

Under the Louisiana Code, the master had no right to mutilate his slave, kill him, or expose him to the danger of death. The latter could own no property except with his master's consent, and enter into no contract except one for his emancipation; he could not be a witness, except under certain circumstances, or a party to a suit except where his freedom was involved; and when prosecuted for a criminal offense notice had to be served on his master. No slave under thirty years of age could be emancipated, and then this could only be done where his behavior for the preceding four years had been good, except where he had saved the life of his master or one of his family. As public sentiment did not favor emancipation, it was hedged with many restrictions and could not be granted without an order of court. (Civ. Cod. of La. I-VI-3. Art. 172-196.)—Ed.

TITLE XXII.

Concerning Liberty.

All creatures in the world naturally love and desire liberty, and much more do men, who have intelligence superior to that of the others, and especially such as are of noble minds, desire it. Wherefore, since in the preceding Title we treated of Slavery, we intend here to treat of Liberty. We shall show what it is; who can give it; to whom it can be given and in what way; what right a master has to the person and property of one who has been his slave, after he has set him free; and for what reasons this right can be lost.

LAW I.

What Liberty Is, Who Can Give It, to Whom It Can Be Given, and in What Way.

Liberty is the power which every man has by nature to do what he wishes, except where the force or right of law or *fuero* does not prevent him. This liberty can be granted by a master to his slave, in church or out of it, before a judge or anywhere else, by will or without a will, or by a written instrument. He should, however, do this himself, and not by an attorney, except where he orders some of those in his direct line to do so. It is necessary when he frees a slave by a written instrument, or in the presence of his friends, to do so before five witnesses. When he desires to liberate him by will, the master granting such emancipation cannot do so unless he is fourteen years old. A master who wishes to liberate a slave in any other way by a written instrument, or before witnesses, or friends, cannot do so unless he is twenty years old; except where the person whom he desires to emancipate is his son or his daughter, whom he had by some female slave; or where said slave is his father, his mother, his brother, or his sister; or his master who gave him instruction; or his tutor or his nurse who brought him up; or his servant, either male or female; or where he had the same foster-mother as his servant; or where the said slave had rescued his master from death, or defended his good name; or where anyone desires to enfranchise one of his slaves, in order to appoint him his agent to attend to his business out of court, and the slave is at least seventeen years old; or where he enfranchises his female slave in order to marry her; but in this case he should swear that he enfranchises her for this purpose, and that he will marry her within six months. Where a master proves any of the aforesaid matters before a judge, if he is under twenty years of age and over seventeen, he has the right to enfranchise his slave, doing so always with the consent of his guardian.

LAW II.

How a Slave Belonging to Two Masters Becomes Free When One of Them Desires to Enfranchise Him, and the Other Does Not.

Where two or more masters own a slave, and one of them wishes to enfranchise him he can do so; and if he, or anyone else, desires to purchase the shares which the other masters have in said slave, they will be obliged to sell him—although they may not desire to do so—for a just and suitable price, which must be determined by the judge of the district where this takes place. When they are obstinate and unwilling to accept the price fixed by order of the judge, and refuse to sell the slave, the judge should cause the money intended for them to be placed on deposit in some church, or in some specified place, and, from that time forth, the enfranchised slave shall be free, although his said masters may not consent to it.

LAW III.

For What Reasons a Slave Becomes Free on Account of Some Good Action Which He Performed, Although His Master May Be Unwilling.

Slaves sometimes deserve to be emancipated, on account of good actions which they perform, although their masters do not emancipate them. This can happen for four reasons. First, when a slave informs the king, or one of those who represent him in court, that some man has violated, or carried off a virgin; second, when he tells him of a man who is making counterfeit money; third, when he gives information that one appointed by a royal order, commander of knights, or of other soldiers on the frontier or in any other place, has abandoned his station without permission of the king.

The same rule applies where he informs on a knight who abandons the king or his commander in a position of this kind. The fourth is, when he denounces anyone who killed his master, or avenges him; or where he reveals any treason against the king or the kingdom. In the three first instances, however, either the king or the other lord to whom the information is given should pay his master the value of the slave.

LAW IV.

A Female Slave Becomes Free When Her Master Places Her in a Brothel to Earn Money by Her.

When a man places his female slaves publicly in a brothel, or in any house, or in any other place whatsoever, in order that they may give themselves to men for money; we decree that on account of such depravity as this, which he orders them to commit, the master shall lose his slaves, and that they, for this reason, become free; and we order that those magistrates who represent Us in court, in the district where this takes place, shall protect said female slaves, so that the party who was their master can never afterwards reduce them to servitude, or have any rights whatever in them.

LAW V.

A Slave Can Be Freed by Reason of Marriage.

When a slave marries a free woman, and his master is aware of it and offers no opposition, the slave becomes free for this reason. We decree that the same rule shall apply where a female slave marries a freeman. We also decree that, where a master marries his slave, she, for this reason, becomes free.¹

¹In cases of this kind severe penalties were imposed by the Visigoths. For each offence the parties received a hundred lashes, and, after the third, the free woman was placed in the power of her parents. If they sent her back, she became the property of the master of the slave. Children born of such illegal unions followed the condition of the father and remained in servitude, the ordinary rule being reversed. So far from a female slave obtaining her liberty by marriage with a freeman, no favor was shown her, she was scourged, and her husband was himself degraded to a servile condition. "*Ipsam autem legem praecipimus custodiri, et de viris ingenuis, qui regius ancillas, vel etiam cuicumque habuerint copulatas, ut conditionis haec forma servetur.*" (For. Jud. III-II.3.)—Ed.

LAW VI.**How a Slave Becomes Free When He Is Made a Priest, or Receives Holy Orders.**

When the slave of anyone becomes a priest, or receives Holy Orders, and his master knows it and consents to it, we decree that for this reason he shall become emancipated; and when he becomes a priest and his master does not know it, he can claim him within a year after he ascertains the fact, and can return him to slavery, although he may have received the orders of subdeacon, and those under it. We also decree that where a slave has received the orders of a priest qualified to say mass, his master cannot claim him in order to return him to slavery, but he will be obliged to pay his master for himself a price equal to his value when he was ordained, or give him another slave as good as he was. We decree that he shall be required to do the same thing if he receives the order of deacon; and when a priest of this kind is made a bishop, he will be obliged to give for himself two slaves, each of whom should be worth as much as he was before he was ordained.

LAW VII.**In What Way a Slave Can Obtain His Freedom by Lapse of Time.**

Where the slave of any person goes about unmolested for the space of ten years, in good faith and thinking that he is free, in the country where the master resides, or for twenty years in some other country; although his master may not see him, he becomes free for this reason. If, however, he did not act in good faith, and knowing that he was a slave was a fugitive for twenty years, he would not therefore be free, and if his master should find him he can return him to slavery. But after thirty years passed while he was a fugitive, from that time forward he will be free, and the party who was his master shall have no rights in him. This is understood to be the case where he is a fugitive in a Christian country, but where he is in the country of the Moors, he shall be free although he remains there, just like a Christian who is a captive in the country of the Moors can escape and come to the country of the Christians.

LAW VIII.**In What Way an Emancipated Slave Should Honor the Person Who Emancipated Him, as Well as His Wife and Children, and in What Things He Should Show Them Reverence.**

Because liberty is one of the most honorable and precious things of this world, those who receive it are obliged to love, obey, and honor their masters who emancipate them. And although men are bound to acknowledge a benefit conferred upon them, and be grateful to those from whom they receive it, in no case is this more true than in this one. For, as slavery is the vilest thing in this world except sin, and the most despised, so, on the other hand, is freedom the dearest and most valuable of all benefits. Wherefore, an emancipated person and his children should greatly honor and reverence, in all things, their master and his children, from whom they received freedom, but emancipated persons are not bound to show reverence to strangers who are made heirs by the will of their masters. The honor they should show to the master who emancipated them is as follows, namely; they should humble themselves and salute whenever they appear before him and his children,

and every time their master comes where they are, if they are seated, they should rise and welcome him pleasantly, and say kind words to him, and honor him in every other way that they can. An emancipated person should not bring his master into court or make any statements against him, or claim anything of him except after permission is asked of the judge of the district; or bring any accusation against him or defame him in any way, except when he is compelled to do so on account of some matter affecting the person or the king, or where his master has wronged him greatly by striking him with arms or committing some other offense against him, so that he could not avoid it. And even when he is compelled to complain of him for a reason of this kind he cannot do so without permission of the judge, as aforesaid; but where an emancipated person is the guardian of a minor, he can bring his master into court in any matter in which the minor is interested. An emancipated person should also honor and assist the party who emancipated him in other ways. For if he should see and know that any of his master's property was being damaged in any way, or was in danger of destruction, he should take the best care he could to prevent it from being destroyed or diminished in value, just as if it belonged to himself, and he should do this when his master is not present. And he should care for his master in any other way, for if he learns that the person who emancipated him was reduced to such poverty that he was in need of anything his emancipated slave could do, the latter should go to his assistance, and give him food, drink, clothing, and shoes according to his means and ability.

LAW IX.

For What Reasons a Master Can Return to Slavery a Person Whom He Emancipated.

There are some masters who emancipate their slaves through good will alone, desiring to show them favor and mercy, without accepting any price from them; and there are others who emancipate them for the price which they receive, or because their master, by his will, directed the heir whom he appointed by said will to emancipate them. For which reason we decree that where a master emancipates his slave through good will, not taking any price for him; or where he receives a price from the slave which he himself gives him, and such an emancipated slave afterwards commits any offence against his said master, or the children of the latter; as, for instance, if he should accuse them of a crime, or defame them; or make friends with their enemies to their injury; or is unwilling to furnish them food or clothing, when it becomes necessary (as we stated in the preceding law); or where he manifests ingratitude in any of the ways by which a man who gives something to another can afterwards reclaim the gift; as we stated in the law concerning Donations, in the Fifth Partida of this book; we decree that the master can return him to servitude for this reason, by making complaint and proving any of these things in court. But where the price which he received for emancipating him was not paid by the emancipated person himself, but by someone else for him; or where he emancipated him by the order of someone else who was his master; then, although the emancipated person may commit any of the offences aforesaid, we decree that the party who liberated him cannot afterwards again reduce him to slavery; but he can complain to the judge of the district, and the latter should reprove or punish him, according to the offence which he committed.

LAW X.

What Right Masters Have to the Property of Those Whom They Have Emancipated.

We have stated that the master retains no right to the person of the slave whom he emancipated. Now we desire to explain what right he has to his property, and we decree that where an emancipated person dies intestate and does not leave a son or grandson to inherit his property, and has neither father, mother, brother nor sister who is free, in this case all the property of the emancipated person shall belong to his master; and if he makes a will and has none of the aforesaid relatives, and his property is worth a hundred maravedis of gold, or more, he must leave his master the third part of his possessions. If his property is worth less than the sum aforesaid he is not bound to leave him anything, if he does not desire to do so. When an emancipated person dies intestate, and leaves any of the above-mentioned relatives, then, no matter how much his estate is worth, his master has no right whatever to any of it, but his son, or the next of kin whom he leaves of those above-mentioned, is entitled to it.

LAW XI.

For What Reasons a Master Can Lose the Right Which He Has to the Property of an Emancipated Slave.

A master who emancipates his slave is called, in Latin, *patronus*, because he places him, as it were, in a new condition. The right which a master of this kind has to the property of an emancipated slave is lost in several ways. The first is, when an emancipated person suffers greatly from hunger, and the party who was his master does not assist him by giving him food, when he can do so. The second is, when the master who emancipated him uses compulsion against him, and makes him swear not to marry, or not to have children. The third is, when an emancipated slave was liberated on account of his merits and the good actions which he performed; as, for instance, where he avenged the death of his master. The fourth is, where an emancipated slave obtains freedom at the hands of the emperor or the king, by his saying to him: "I command that you be free, just as if you had never been a slave." The fifth is, where the party who was master of an emancipated slave is condemned to perpetual banishment. The sixth is, where a master receives something from his emancipated slave, instead of the share of his property to which he is entitled after his death, or considers himself paid for it although he does not receive it. The seventh, where a patron liberates his slave and makes him promise, or bind himself to perform some labor after he has been emancipated; for in whatever way the patron receives from his emancipated slave what the latter promised him; or where he performs the labor which he agreed to perform; or where he receives a sum of money instead of these things, he loses, for this reason, the share of his property which he was entitled to inherit, except where he receives said sum of money for his own support while he is suffering greatly from hunger.

We also decree that, where a patron releases his emancipated slave from all claims he has upon him, this is the eighth reason by which he loses the right to inherit his property; but although he may lose this right, nevertheless, if the emancipated slave commits any of the offenses which we mentioned in

the law which begins, "There are some masters;" he can return him to slavery on this account. For any of the reasons we have mentioned in this law, by which a patron loses the right which he has to inherit the property of his emancipated slave, his children and all his descendants as far as the fourth degree, lose it also for the same reason.

We also decree that if the children of a master bring an accusation against an emancipated slave of their father, by means of which he will be liable to lose his life, or be banished; or if they institute proceedings to again reduce him to slavery, where they are under twenty-five years of age and prosecute the case until a decision is rendered in his favor; they, for this reason, lose the right which they had to inherit the property of said emancipated slave. The same rule applies where they instigate anyone else to bring such an accusation by their orders, or where they themselves testify against him in proceedings of this kind.¹

¹ The status of a slave, resulting from the restrictions necessarily imposed upon him to maintain his subordination and dependence, was originally, at Rome, scarcely above that of a beast of burden. Although, afterwards, he obtained to the rank of a *homo*, which was previously refused him, he never became a *persona*, which would have entitled him to apply to the courts for redress, in case he suffered injustice or injury. The civil law declared him a nullity so far as legal rights were concerned. "*Servile caput nullum ius habet.*" (Corp. Jur. Civ. Dig. IV-V-3.) His condition was appropriately likened to that of death. "*Servitutem mortalitati fere comparamus.*" The harsh rules regulating slavery, as first formulated, were subsequently, to some extent made less intolerable and oppressive by the Emperors.

Where slavery was established in the United States, no precedents for its exercise and control being obtainable from the jurisprudence of England, recourse was had to the civil law, many of whose most severe provisions were adopted and maintained to the end.

The general rule defining the servile state in this country was that, "a slave shall be deemed a chattel personal in the hands of his owner to all intents, construction and purposes whatsoever." The condition was hereditary and perpetual; destitute of the enjoyment of civil rights; in most instances permitted unlimited punishment at the hands of the owner; and denied the power of redemption by the slave himself, or his transfer to others in case of excessive cruelty. The time of his labor, the amount and quality of his food and clothing were absolutely at the discretion of the master. Many of these regulations were subsequently abolished, and the condition of the slave greatly ameliorated in consequence. Gross neglect or torture of a slave was punished in some states by fine and imprisonment. The wilful murder of one was a capital crime in all. Many were emancipated at the death of their masters, the privilege of self-purchase was accorded to others. When ill, they were cared for; when old and infirm, slaves were usually treated with generosity and indulgence.

While marriage could be celebrated, the ceremony was often a farce, and there was no restraint imposed upon the separation of families, all considerations of humanity were forced to yield to the demands of trade. Where an individual was in servitude, the legal presumption was that he was justly held; and even a manumitted person, if unable on demand to produce documentary evidence of his freedom, was liable to be sold at auction as an unclaimed fugitive. Education was prohibited. Emancipation was naturally discouraged, and if a manumitted slave remained longer than twelve months in the state where he had been set free, he forfeited his right to liberty, and could be arrested and disposed of at auction for the public benefit. (Stroud, *Laws Relating to Slavery in the United States.*)—Ed.

TITLE XXIII.

Concerning the Status of Man.

The status of man and his conditions are divided into three kinds, for men are either free, servile, or emancipated who are called, in Latin, *liberti*. There is also another distinction, for they are either born or to be born; and since in the preceding Titles we spoke of the three first kinds, we desire here to speak in general of the conditions appertaining to men in other respects, which appear to be strange. In the first place we shall explain what a status is; how many kinds there are; in what way it is beneficial; and how its quality is distinguished.

LAW I.

What the Status of Men Means, How Many Kinds There Are, and in What Way It Is Beneficial.

Status hominum means, in Castilian, the state, condition, or manner in which men live, or are. There are as many kinds of conditions as we mentioned in the Introduction to this Title; and there is great advantage in recognizing and knowing the condition of men, for one can by this means, better distinguish what happens with respect to their persons.

LAW II.

How the Quality Which Attaches to the Condition of Men Is Distinguished.

The quality of the condition of men has several graduations, for the person of a freeman is judged according to law differently from that of a slave, although, according to nature, no distinction exists between them. And also, men of noble descent are honored and judged, in another way from those of inferior rank, and priests from laymen, and legitimate children from bastards, and Christians from Moors and Jews. Moreover, the condition of a man is superior to that of a woman in many things and in many respects, as is clearly shown in the laws of the Titles of this our book which treats of all the matters aforesaid.¹

¹The incapacity of women, dependent partly upon their alleged inferiority of intellect, and partly upon certain defects of their physical organization which interfere with their active participation in the affairs of life as freely as individuals of the opposite sex, was admitted without question by the civilized nations of antiquity. The Greeks had *kupikoi* (*kuriot*) or "masters," equivalent to guardians, appointed to transact business for them. At Rome, they were always under tutelage, which was often perpetual. It was generally accepted that no woman was competent to conduct her own affairs, and that all business in which her interests were involved must be managed by someone to whom the law granted authority over her, who was usually a relative of her husband: "*in manu esse parentum, fratrum, virorum.*" Alone among Roman females, the vestal virgins were exempt from such supervision.

Women, not being *sui juris*, were originally incapacitated from making wills, which rule was subsequently relaxed, but the consent of their guardians was always indispensable. (Corp. Jur. Civ. Dig. V-II-19. XXXI-I-77.) No woman could inherit more than 100,000 *sestercies*, equal to about \$275.00, by the Voconian law. They were of course excluded from all public employments. "*Foeminae ab omnibus officiis civilibus, vel publicis remotae sunt: et ideo nec iudices esse possunt, nec magistratum gerere, nec postulare, nec pro alio intervenire, nec procuratores existere.*" (Ulpian II.)

The Hindus, with the caution and distrust common to Orientals, required all women to be subject to guardianship. "A man, both day and night, must keep his wife so much in subjection, that she by no means be mistress of her own actions; if the wife have her own free-will, notwithstanding she be sprung from a superior cast, she will yet behave amiss." When she had no husband or relatives this duty devolved upon the magistrate. The prevailing estimate of the female character is concisely stated as follows: "Women have six qualities; the first, an inordinate desire for jewels and fine furniture, handsome cloaths, and nice victuals; the second, immoderate lust; the third, violent anger; the fourth, deep resentment—no person knows the sentiments concealed in their heart; the fifth, another person's good appears evil in their eyes; the sixth, they commit bad actions." (Gentoo Cod. XX.)

While it is the general impression that women occupy a degraded and almost servile position under the laws of Islam, this is far from being the case. In the "Age of Ignorance" which preceded the advent of Mohammed, the birth of a female child was considered a misfortune, and these helpless creatures were frequently buried alive; when allowed to exist, they were always chattels, to be disposed of like other personal property at will—the widows of a deceased person being transmitted to his heir with the remainder of the estate; and incestuous practices were the rule instead of the exception. All this was changed by Mohammed. When a woman arrives at legal age she becomes her own mistress. She can own property both real and personal, and dispose of it at pleasure, and the law concedes to her, with few exceptions, the

LAW III.

In What State and Condition Is an Unborn Child.

While a child is unborn it will profit by everything which is done or said for its advantage, just as if it were born, but whatever is said or done to the injury of its person or property will be of no effect. For this reason, if the master of a female slave who is pregnant directs his heirs, or confers authority on someone else to emancipate her at a certain time, and the other party does not liberate her upon the specified day, but waits maliciously until the child is born, so that it may become a slave; the wise men of the ancients, who made the laws, directed that from the appointed day, the mother and the children born to her should both be free. They also declared that where a pregnant woman has committed an offence for which she deserves to be put to death, her unborn child will not be subject to the penalty; and therefore the mother should be kept until her child is born, as we stated in the Seventh Partida, in the Title concerning Punishments.

LAW IV.

For How Long a Time a Pregnant Woman Can Carry an Unborn Child,
According to Law and According to Nature.

Hippocrates was a philosopher in the art of medicine, and he stated that the longest time that a pregnant woman could carry her child was ten months. For this reason if, within ten months from the death of her husband a woman should have a child, it will be legitimate, and is understood to belong to her husband, although it was born during the said period, but she must have been living with her husband at the time when he died. This philosopher also stated that a child who was born within seven months, providing its birth took place on any day of the seventh month, and it was perfect and viable, should be considered legitimate and belonging to the father and the mother, if they were married and living together at the time when it was conceived. This should also be the decision where the child is born inside of nine months, and this number is more in use than the others. Where the birth of a child takes place on one day of the eleventh month after the death of its father, it should not be considered to belong to him.¹ In what way women should be watched who, after the death of their husbands state that they are pregnant, in order that no mistakes may arise with regard to the children to be born of them, we describe in the Seventh Partida of this book, in the laws which treat of this subject.

same rights and privileges which it grants to her husband. She can bring a suit in her own name or appoint an agent to act for her. She can be sued without her husband being joined with her; make same rights and privileges which it grants to her husband. She can bring a suit in her own name, or contracts with him or with others; obtain property by donation, purchase, or devise; enjoys an incontrovertible right to money earned by her own labor; and has a preferred lien upon her husband's estate for a gift promised her before marriage. She can be appointed an executrix, or a trustee, but when the duties of the trusteeship can only be discharged by men, she is necessarily ineligible. (Seyd. Ameer, Ali. Mah. Law. Vol. I., pp. 347, 348, 544. Vol. II., pp. 16, 17, 18.) It thus appears that the disabilities imposed upon women are far less numerous and important under Moslem, than under Anglo-Saxon or Latin jurisprudence.

¹ This was the rule of the civil law, and is still in force in Italy, France, and Spain, where the term is more exactly stated as three hundred days. The Romans, in order to avoid all question of legal parentage, forbade a widow to marry *infra annum luctus*, a regulation which antedated the reign of Augustus. At common law, the limit was two hundred and eighty days, but it was not rigidly insisted upon, owing to the recognized uncertainty arising from the varying period of gestation of different women. The Code of Louisiana prescribes the term of three hundred days. In the other States of the Union the time is fixed at from two hundred and seventy to three hundred days.--16d.

LAW V.**Concerning Creatures Without Human Form Born of Pregnant Women.**

Creatures born of women and who are not formed as human beings as where they have the heads or limbs of beasts, should not be considered children. For which reason neither their fathers nor mothers are bound to make them heirs of their property, nor are they entitled to it, although they may be proved to be heirs. But where a creature is born with the form of a man, although he may have too many, or too few limbs, this does not prevent him from inheriting the property of his father or mother, or other relatives.

TITLE XXIV.

Concerning the Obligation Existing Between Men and Their Lords by Reason of Natural Relationship.

One of the greatest obligations which men can be under to one another, is that of natural relationship, for as it unites them by descent, so it makes them as one through the long practice of faithful affection. Wherefore, since we spoke of the obligation which emancipated persons are under to their masters who liberated them, on account of both nature and justice, and of other matters which relate to the state of men in general we intend to speak here of the obligation which persons are under to those to whom they belong, on account of the bond of a common origin. We shall show what nativity means; what difference exists between it and nature; how many kinds there are; and what obligations natives are under to those to whom they belong; and how this relation should be preserved between them, and also how it can be abolished.

LAW I.

What Natural Relationship Means, and What Distinction Exists Between It and Nature.

Natural relationship means an obligation which men are under to others to love and cherish them for some just reason. The following distinction exists between it and nature, namely; nature is a force which causes everything to remain in the condition directed by the bond of God; natural relationship is something which resembles nature and assists everything derived from it to exist and be preserved.

LAW II.

How Many Kinds of Natural Obligations There Are.

The wise men of the ancients established ten kinds of natural obligation. The first, and most important is the relation which men sustain towards their natural lord, because they, as well as those from whom they are descended, were born and settled, and exist in the country of their said lord; the second is that derived from vassalage; the third, that which arises through nurture; the fourth, springs from knighthood; the fifth, marriage; the sixth, from inheritance; the seventh, from rescue from captivity or liberation from death or dishonor; the eighth, from emancipation, for which the party who granted it received no reward; the ninth, arises through becoming a Christian; the tenth, through a residence of ten years in a country, although the party may be a native of another.

LAW III.

What Obligations Natives Are Under to Those to Whom They Belong.

The debt which is owing to God from man is greater than anything else which can possibly exist. This debt descends from nature, because He caused man to be born, and preserves his life, and affords him the hope of a perpetual existence in the other world, according to his merit; and he should know, love, and fear God for these reasons, and in the way which we described in the Second Partida of this book, in the laws which treat of this subject. Moreover, men owe a great debt of nature to their fathers and mothers. The debt a man owes to his father is very great, for the reason that he begot him at the time when he should have done so, and diminished his own substance in order that the other might exist, and also because his property be-

longs to him. He is also under deep obligations to his mother, for the reason that she had her share in his origin, and underwent severe hardships before he was born, and serious danger at the time, and had much trouble in rearing him. He is indebted to the nurse who brought him up, because she furnished him sustenance at a time when he required it, and nourished him as his mother would have done. He is also under a great obligation to his tutor, because he cared for him, and guided him, when he had need of it, and was a father to him. For all these reasons children and retainers are bound to love, honor, and protect their fathers and mothers, and their tutors and nurses, and assist them with their property when they need it; and they should not kill, wound, or dishonor them, or take their property without their consent, but they should protect them from others who desire to commit offenses of this kind against them; and the obligations which retainers are under to those who bring them up in their houses are set forth in the laws of the Titles which treat of this subject.

LAW IV.

Concerning the Obligations Which Natives Are Under to Their Lords and to the Country in Which They Live, and How This Relation Should Be Maintained Between Them.

All dependents should love their lords on account of the debt of nature which they owe them, and serve them because of the benefits they receive from them and those which they expect to receive; and honor them on account of the honor which they obtain from them; and protect them because they and their property are protected by them; and increase their property, because their own will be increased for that reason; and cheerfully suffer death for their lords, if it should be necessary, on account of the good and honorable life which they live with them. They owe a great debt to their country, for they should love it, and add to it, and die for it, when this becomes necessary, in the way and for the reasons we mentioned in the Second Partida of this book, in the laws which treat of this subject. This relation which dependents sustain to their lords should always be loyally preserved, all matters being complied with which each justly owes the other, as we stated in the Second Partida of this book, in the laws which treat of this subject.

LAW V.

How Natural Relationship May Be Lost.

To denaturalize himself according to the Spanish language, is for a man to abandon the relation which he holds to his lord, or to the country in which he lives. And because this is, as it were, a debt of nature, this relation can not be dissolved except for some just reason. The lawful reasons by which persons can do this, are four in number. One of them arises through the fault of the dependent, and three through the fault of the lord. This would be the case where the dependent commits treason against his lord or his country, for, by his act alone, he is deprived of the property and honors of his lord and of his country. The first of the three which arises through the fault of the lord is, when he attempts to cause the death of his dependent, without reason and without justice; the second, when he dishonors him through his wife; the third, when he wrongfully disinherits him, and is unwilling to treat him with justice, either by the decision of friends, or by that of court.

TITLE XXV.

Concerning Vassals.

Vassalage is also a great and important debt which those who are vassals owe to their lords, and which their lords owe them. Wherefore, since in the preceding Title, we treated of the obligation which men are under to one another, through natural relationship, we intend to speak here of the obligation existing by reason of lordship and vassalage. We shall show what a lord is and what a vassal is; and how many kinds of lordship and vassalage there are; how each of them can be established; what natural obligations are incurred after they have been established, and for what reasons they can be abrogated; and how a lord should act toward his vassal, and the vassal toward his lord, after they have been separated.

LAW I.

What a Lord Is, and What a Vassal Is.

A lord, properly speaking, is one who has command of, and authority over, all persons living in his jurisdiction. All should call a person of this kind lord, not only those who are his dependents, but also those who visit him and his country. Moreover, every man is called a lord who has power to arm and create knights, by reason of nobility of birth, but a person of this kind should not be styled lord except by those who are his vassals and who receive benefits from him. Vassals are those who receive honors and benefits from their lords, as, for instance knighthood, land, or money, in return for special services which they are obliged to render them.

LAW II.

How Many Kinds of Lordship and Vassalage There Are.

There are five different kinds of lordship and vassalage. The first, and most important, is that which the king possesses over all persons in his dominions, called, in Latin, *merum imperium*, which means the clear and absolute right to judge and command the people of his country. The second is, that which lords exercise over their vassals, in consideration of the benefits and honors which the latter receive from them, as we explained above. The third is, that which lords enjoy over their estates, whether this refers to independent ones, or to their own patrimony, according to the *fuero* of Castile. The fourth is, the authority which fathers have over their children, which we explained fully above in the laws of the Title which treats of this subject. The fifth is, the powers which masters possess over their slaves, as previously stated in the laws which treat of this subject.

LAW III.

What the Words *Devisa*, *Solariego*, and *Behetria* Mean, and What Distinction Exists Between Them.

Devisa, *solariego*, and *behetria* are three kinds of lordship which noblemen possess in certain localities, according to the *fuero* of Castile. *Devisa* means an estate which comes to a man, from the side of his father or mother, or from his grandparents or from any others from whom he descends, which is divided among them where their number and to which relatives the said estate belongs is positively known. *Solariego* means a man established upon the ground of an-

other. A person of this kind can leave whenever he desires to do so and take all his personal property with him, but he cannot dispose of said land, or claim reimbursement for any improvements he may have made upon it, but these will belong to the lord who owns it. If, however, the *solariego*, at the time when he established himself in that locality, received any maravedis from his lord, or if they entered into any contracts with one another, these should be observed in the way agreed upon. The king has no other rights in *solariegos* like these excepting that of money alone. *Behetria* means land at the disposal of the party who lives upon it, and who has a right to select as his lord anyone that he wishes, in order to improve his condition. All those who are lords of *behetria*, can collect supplies there whenever they wish, but they are required to pay for them within nine days, and anyone who does not do so within that time, must pay double their value to him from whom he took them, and he is also obliged to pay the king a fine, that is to say, forty maravedis for everything which he took. Out of every tax levied by a nobleman upon a *behetria*, the king is entitled to half. A new *behetria* cannot be created without the permission of the king.

LAW IV.

How One Man Can Become the Vassal of Another.

One man can become the vassal of another, according to the ancient custom of Spain, in the following way, that is by acknowledging himself to be the vassal of the party who accepts him, and by kissing his hand in recognition of his authority. There is another way in which this is done by means of homage, which is more serious because by means of it a man not only becomes the vassal of another, but he is obliged to comply with whatever he promises, as he would by a contract. Homage means that one man is placed in the hands of another and becomes his own, for the purpose of giving him security that he will accomplish something which he promises to give, or to do. Homage not only takes place in the contract of vassalage but in all other contracts and agreements which men enter into with one another, with the intention of complying with them.

LAW V.

At What Times a Vassal Is Required to Kiss the Hand of His Lord, and When He Is Not Required to Do So.

A vassal should kiss the hand of his lord when he becomes his vassal, as we stated in the preceding law. He should also do this when the former makes him a knight, as soon as he girds on his sword, and also when he takes leave of him. At each of these times the vassal is required to kiss the hand of a nobleman, according to the custom of Spain, but at no other time. Noblemen, as well as other persons of his dominions are, however, required to kiss the hand of the king on the occasions which we have mentioned above. They should also kiss it whenever he goes from one place to another and they come forth to receive him, and every time that he returns to his palace, or wishes to leave it to go elsewhere, and whenever he gives them anything, or promises to confer benefits and favors upon them. They are required to do this to the king for two reasons; first, by reason of the natural relationship which they are under in regard to him; second, in recognition of the authority which he has over them.

LAW VI.**What Mutual Obligations Exist Between Vassals and Their Lords.**

Very important obligations exist between vassals and their lords, for the former are bound to love, honor, and protect them, promote their welfare, and prevent them from being injured, in every way they can. They should also serve them well and faithfully, on account of the benefits which they receive from them. We also decree, that a lord shall love, honor, and protect his vassals, show them favor and mercy, and prevent them from suffering injury and dishonor; and when these obligations are properly observed, each of them does his duty, and true affection increases and endures between them. There are other obligations of many kinds which exist between vassals and their lords, who are mutually bound to protect one another both in war and peace, which we explained in the Second Partida of this book which treats of this subject.

LAW VII.**For What Reasons a Vassal Can Leave His Lord, and When, and in What Way.**

No vassal can take leave of, or separate from, his lord during the first year in which he made him a knight, because of any poverty or hardship which he endures while with him, or for any other reason; except when he is compelled to do so on account of one of the three following things. First, where the lord attempts to bring about the death of his vassal. Second, where he attempts to dishonor his wife. Third, where he wrongfully disinherits him, and is unwilling to do him justice, either by a decision of friends, or by that of the king or his court. For any of these reasons he has a right to leave his lord at any time, before the year has expired, or afterwards. But after a year has expired he has a right to leave his lord, even though he does not wrong him in one of the three ways aforesaid; for if he dislikes to live with him because he does not pay him his wages regularly, or for any other reasons whatsoever, he can leave him. When he takes leave of him he should do so in person, and not through anyone else, except where he is afraid that he will kill him or dishonor him; for in such a case he can take leave of him through anyone else of noble descent, and the parting should take place in the following way, by the vassal saying to the lord; "I bid you farewell and kiss your hand, and from this time forth I am no longer your vassal." When anyone else takes leave in the name of the vassal, he should speak as follows: "So-and-So, knight, bids you farewell, and I kiss your hand for him and say to you in his behalf that, from this time forth, he is no longer your vassal."

LAW VIII.**What Behavior a Lord Should Observe Towards His Vassal, and the Vassal Towards His Lord, After They Are Separated.**

When a vassal leaves his lord for any of the reasons which we stated in the preceding law, after he has left him he can become the vassal of someone else, but not before, and although he becomes the vassal of another, he should never wound or kill his former lord on account of the knighthood which he received from him, and the benefits he conferred upon him, and because of his vassalage; except where the lord whose vassal he is in is in danger of death, so that he cannot free him from it without wounding the other lord whose vassal he formerly was; and even then, if he is compelled to wound him, he should do

so in such a way that he will not die of the hurt if he can avoid it; but he should not strike him, or do him any injury with the arms or the horse which he gave him.

LAW IX.

What Punishment a Vassal Deserves Who Takes Pay from a Lord and Does Not Serve Him.

Where the vassal who takes leave of the lord with whom he was accustomed to live, received pay from him and did not serve him, and his lord orders him personally, or by letter, to come and serve, and he refuses to do so, he should pay double of all that he received in this way, for the reason that he was unwilling to serve him. We also decree that where a vassal serves his lord and the latter is unwilling to pay him, so that for all the time which he served him he gave him nothing, he shall be compelled to pay said vassal double the amount due him. But in case the lord did not need the services of the vassal because nothing happened to him which required it, and he did not send for him, he would then not be required to return anything received from his lord, even though he had not rendered him any service, for since he has always prepared to render his services, it was not his fault if his lord did not send for him.

LAW X.

For What Reasons the King Can Expel His Noblemen from the Country.

Those are called noblemen, according to the custom of Spain, who in other countries are called counts and barons, and these kings can banish from the country for one of the three following reasons. First, when they desire to take vengeance upon them, on account of some grudge they bear them. Second, on account of some evil deeds which they may have committed in the country. Third, because of some crime which may be connected with treason or perfidy; and whenever it happens that a king is disposed to expel a nobleman from the country through ill-will, the party whom he desires to banish should privately, and in secret, petition him not to do so; and no one else should be present at the time except these two; and if he is unwilling to grant his request he should ask his mercy a second time, in the presence of one or two of the king's household. If he still refuses to grant him this request, he can ask his grace a third time in the presence of the court, and if he still refuses to pardon him, and orders him to leave the country, under such circumstances his vassals can follow him, and leave the country with him. The king should however, allow him a period of thirty days within which to depart, and should grant permission for persons to sell him food during those thirty days in the places through which he travels.

The nobleman, should, however leave the country before the thirty days have expired, and after he has left it, he can make war upon the king, if he desires to do so, in order to obtain means to live. There are two reasons why he can do this. First, because the king banished him and refused to give him a reason why he did so; second, because he is entitled to a living from the country of which he is a native. In a war of this kind, however, he should not steal, or enter any town or castle by force or burn it. If the king has deprived him of any property, he can, in that case, enter a town or castle, or any other domain belonging to the king which is of equal value to that of the property of which he was deprived, and hold it for restitution until the king returns what he took from him, but he has no right to sell or dispose of it in any way; and he should not, for the purpose of obtaining restitution, take any city, castle, or

other fortress, which he himself, or any of his vassals, had formerly held. The king should not do any harm or injury to the wife or children of the said nobleman, nor to the wives or children of his vassals who follow him, on account of a banishment of this kind, or by reason of such a war. And although his vassals assist their lord in making war, they should not keep or waste the share of booty which they obtain, but they should give it to the king; and in a banishment of this kind, not only can his vassals and connections depart with said nobleman, but also his retainers and all the men of his household can do so, on account of the benefits which they receive from him. Persons of this kind, although they can assist their master and protect his person from wounds and death, should not make war against the king.

LAW XI.

Vassals Can Leave the Country With a Nobleman When the King Banishes Him from It, on Account of Some Offence Which He Has Committed.

When the king banishes a nobleman from the country, on account of some flagitious action which he has committed, his vassals can depart with him, and assist him in gaining a livelihood with another king. However, in the case of a banishment of this kind, they should not be absent from the kingdom more than thirty days, and, should return at the expiration of that time. Moreover, neither the nobleman, nor any of those who depart from the country with him, should make war upon the king, or take or steal anything in his dominions; although if the said nobleman becomes the vassal of another sovereign, he can, of himself, make war against the king who banished him in behalf of the other lord whose vassal he became. He can do this by order of the king whose vassal he is, but he should not do it at his own instance, for the purpose of taking vengeance on the king who banished him from the country. And if the nobleman, on his own responsibility, should make war against one king before he becomes a vassal of another, and his vassals remain with him longer than the thirty days aforesaid, and assist him in making war; then the king should seize all the property which the nobleman and they have in his country. And although the king can pardon the nobleman, permit him to return, and release him from the payment of the fine to which he was liable on account of the offence which he committed, which is forty maravedis for everything which he appropriated, nevertheless he can not release him from paying double the value of what he stole or took from those against whom he committed the offence.

LAW XII.

Vassals Are Not Obligated to Follow Noblemen Whom the King Banished from the Country for the Crime of Treason or Perfidy.

When the king banishes a nobleman from the country, for the crime of treason or perfidy, his vassals are not bound to follow him, except where the said nobleman desires to take up his residence elsewhere, and certain of his vassals wish to go with him, on account of the shame and the grief they experience for the crime which he has committed; and even those who thus are willing to go with him for the purpose of bearing him company, should do so with the intention of returning to their country as soon as they can. If they remain with him, and are not willing to return to their country, they become traitors for this reason, whether they make war against the king and the kingdom, or not. If they make war upon the country, the king can then banish

the wife and children of the nobleman, as traitors, and he can also banish the wives and children of his vassals who remained with him, but they will not however, be liable to the penalty of treason.

LAW XIII.

When Vassals Should Follow a Nobleman If He Leaves His Country of His Own Accord, and the King Does Not Banish Him.

When a nobleman leaves his country of his own accord, and the king does not banish him, and he goes to the land of the Moors, his vassals should not follow him. This is the rule because he commits treason in two ways; first, he commits it against God, because he goes to the assistance of the enemies of the faith; second, he commits it against his natural lord, by making war against him and ravaging his country, and his vassals are guilty of the same treason if they accompany him in order to assist him. Where, however, the said nobleman repairs to a Christian country, his vassals can go with him to assist him in gaining a livelihood from another king, but, as soon as he has gained it they should return to the king and the kingdom, and neither he, nor his vassals should make war or commit any injury therein.

TITLE XXVI.

Concerning Fiefs.

A fief is a kind of landed estate which lords confer upon their vassals in consideration of their vassalage. Wherefore, since in the preceding Title we treated of Vassals, we intend here to treat of Fiefs, and we shall explain what a fief is; whence it derived this name; how many kinds there are; and what difference there is between a fief, land, and honor; who can bestow fiefs and to whom they can be given; what services vassals should render to their lords in return for them; who can inherit them; for what reasons vassals can lose them after they have been given to them; and who has authority to examine and decide controversies and suits which arise between lords and their vassals on account of fiefs.

LAW I.

What a Fief Is, Whence It Derived This Name, and How Many Kinds There Are.

A fief is a landed estate which a lord bestows upon some man in return for his becoming his vassal, doing him homage, and being loyal to him, and it derived its name from the faith which a vassal should always keep with his lord.¹ There are two kinds of fiefs; one is where it is granted in a town, castle, or some other kind of real property. A vassal cannot be deprived of a fief of this description except where he fails to carry out the agreement made with his lord, or where he commits some offence on account of which he should lose it, as we shall show hereafter. The other kind is called a fief of the treasury, and this is conferred when the king deposits every year a certain sum of maravedis in his treasury for the benefit of one of his vassals. The king can deprive his vassal of a fief of this kind whenever he desires to do so.

LAW II.

What Difference Exists Between Land, Fief, and Honor.

The maravedis which the king sets apart for the benefit of noblemen and knights, in certain places, is called *tierra* in Spain. The maravedis with which he charges particular places that belong solely to the royal domain, and which he gives to said noblemen or knights, are called honors, as, for instance, the revenues of some town or castle. Whenever the king confers this land and honor upon knights and vassals he enters into no agreement with them, for it is understood, according to the *fuero* of Spain, that they are obliged to serve him faithfully, and that they should not lose these privileges during their lives, if they do not give cause for it. A fief, however, is granted under a contract, by the vassal promising his lord to serve him at his own expense with a certain number of knights and retainers, or to render him some other special service, in some other way.

¹ This definition is incorrect, and absurd as well, having probably been framed by some ecclesiastic with more zeal than knowledge. The etymology of the synonymous terms fee, fief, and feud, is obscure; but, according to the best authorities, they are presumed to have been derived from the ancient Teutonic *foeda*, originally signifying rewards, and afterwards lands distributed by a general among his victorious soldiers, in return for which they were obliged to render him military service when called upon. The title to the property remained in the grantor, who, in the Middle Ages, was always the lord of the party to whom it was conveyed.—Ed.

LAW III.**Who Can Bestow a Fief, and Upon Whom It Can Be Bestowed.**

Emperors, kings, and other great lords can grant or establish fiefs, or can bestow, as fiefs, property which is absolutely theirs. Moreover, archbishops, bishops, and other prelates of the Holy Church can grant as fiefs the property which their predecessors were accustomed to dispose of in this way. Other lands, however, which it was not customary to bestow as fiefs, they have no authority to grant as such. A fief can be conferred upon, or granted to, any man who is not the vassal of another lord, for it is written in the law that no man can be vassal of two lords.

LAW IV.**In What Way a Fief Should Be Granted and Received.**

Lords can grant and give fiefs to their vassals in the following manner. The vassal should kneel before his lord and place his hands within those of the latter, promising him, swearing to him, rendering him homage, and covenanting with him, that he will always be loyal and faithful to him and give him good advice whenever he asks it; that he will never reveal his secrets; that he will aid him against all the men in the world according to his ability; that he will labor for his advantage whenever he can do so; that he will prevent his being injured; and that he will observe and comply with the agreements which he made with him concerning said fief. After the vassal has sworn and promised all these things, the lord should invest him with a ring, a glove, and a staff, or with something else belonging to what he gives him as a fief, and should place him in possession of the latter, either in person or through some other man whom he orders to do so.

LAW V.**What Service Should Be Rendered by a Vassal to His Lord in Return for a Fief, and, Moreover, How Lords Should Protect Their Vassals.**

Where vassals promise to render some special service to their lords when they receive fiefs from them, they should then comply with exactly what they promised. Where it happens that no particular service, which the vassal should render his lord, was mentioned, it is nevertheless, understood that the vassal, in consideration of the fief which he holds of him, is bound to assist him in all the wars which he begins justly, as well as in all wars which others wrongfully make against him. We also decree that lords should assist their vassals and protect them in their rights whenever they can do so, in order that they may not suffer injury or dishonor from others; and they should also be loyal to them in everything, just as vassals are required to preserve loyalty to their lords.

LAW VI.**Who Has the Right to Inherit a Fief and Who Has Not.**

Fiefs are of such a nature that men cannot inherit them as they do other landed estates. For although a vassal who holds a fief of his lord may leave sons and daughters when he dies, his daughters cannot inherit any part of the fief, but the male children, one, two, or more, may inherit it together, and they are bound to serve their lord for the reason that he bestowed it upon their father, in the same way that their father had to render service for the same.

When he does not leave any male children, and has grandsons descended from one of his sons, but not from a daughter, they should inherit the fief as their father would have done had he been living. The inheritance of a fief does not pass beyond grandsons, but reverts afterwards to the lords and their heirs. Where, however, a vassal, at his death, leaves a son or grandson who is dumb, blind, infirm, or incapacitated so that he cannot render service for the fief, he does not deserve to have it, and should, under no circumstances, inherit it. We decree that the same rule shall apply where one of said sons becomes a monk, or enters a religious order, or is a member of the clergy so that he cannot render service by reason of his Holy Orders.

When we stated that the son or grandson of a vassal was entitled to inherit a fief, this was understood to be the case when a town, castle, or some other landed estate was especially granted as such. But neither the son nor grandson of a vassal has a right to inherit a kingdom, or a district containing a town, a castle, or any other portion of the royal domain which was given as a fief, where the emperor, king, or other lord who bestowed it upon his father or grandfather, did not especially grant it also to his sons and grandsons.

LAW VII.

When Fathers and Brothers of Vassals Cannot Inherit a Fief.

When a man holds a town, castle, or some other property, as a fief from his lord, and when he dies leaves neither son nor grandson, although he may have a father or grandfather, neither of the latter can inherit it; for fiefs are of such a nature that those descended in direct descending line can inherit them, and those in the ascending line cannot.

We also decree that where a vassal, who holds a fief of his lord, leaves neither son nor grandson when he dies, and has one or more brothers, they can inherit the fief, if it was one granted to the father or grandfather of the deceased; or if the brothers who are living, or the one who is dead, purchased it with their common property. But where the fief was given to the deceased brother, the surviving brothers have no rights in it, but we decree that it shall revert to the lord, since the deceased did not leave son or grandson who could inherit it.

LAW VIII.

For What Reasons a Vassal Can Lose His Fief.

A vassal can lose his fief if he does not render to the lord and his sons the service which he promised to render on account of it, and we decree that a vassal shall lose his fief if he deserts his lord in battle. We also decree that he shall forfeit it if he brings an accusation against his lord, or entertains evil designs against him for which he may suffer great loss of property, or personal disgrace. Moreover, we decree that where a vassal is aware that certain persons harbor evil designs against his lord, and that he may suffer serious injury in some way if he does not exert himself to prevent it so far as he can do so, or where he pays no attention to it, he shall lose his fief for this reason, if he kept silent for the purpose of deceit.

We also decree that when a vassal enters into an agreement, or renders homage, or swears with other persons, with the intention of plotting against, or doing some injury to his lord; or if he attacks him anywhere, either alone or in company with others, with the desire of wounding, killing, imprisoning, or dishonoring him; or if he puts his hand upon him with the intention of committing any of these offenses against him; or where he exerts himself to

cause his death in any way, he shall, for any of these reasons, forfeit the fief which he holds of him. Moreover, we decree that when a lord languishes in prison, or in a castle, or in any other place of confinement whatsoever, and his vassal does not exert himself to rescue him, where he is able to do so, he shall lose the fief which he holds of him for that reason. We also decree that if a lord, or his wife is besieged in any town, castle, or other fortress, and the vassal is among the besiegers, he shall forfeit his fief on that account.

LAW IX.

For What Offenses Committed Against His Lord a Vassal Loses His Fief, and Also How the Lord Loses the Ownership of It if He Commits an Offense Against His Vassal.

Where a vassal kills the brother, son, or grandson of his lord, he should lose his fief on account of it. We also decree that if a vassal lies with the wife of his lord, or with his daughter or granddaughter, he shall lose his fief; and the same rule applies where he endeavors, in any way, to persuade them to receive him, or to abduct any of them for the purpose of bringing such dishonor upon his lord.

By reason of all the offenses aforesaid, and of each of those we enumerated in the preceding law by which a vassal loses his fief when he commits them, a lord also loses the ownership of a fief, if he commits any of said offenses against the person of his vassal, or of his wife, children, grandchildren, or daughters-in-law, and the ownership of the fief will remain in the vassal forever, by the right of perpetual property.

LAW X.

A Vassal Cannot Alienate a Fief, and His Son, After the Death of His Father, Should Go and Swear Fealty to the Lord or His Sons.

When a vassal sells, pledges, or transfers all or any portion of a fief which he holds of his lord, without his permission, the latter can recover it without giving him anything for the same, and any time that may have passed during which anyone else held it will be no bar to his doing so.

We also decree that where a son left by a vassal who held a fief of a lord, does not go, within a year and a day from the death of his father, before the lord who granted the latter the fief, to covenant with him and swear to be loyal to him on account of said fief, and to render him service for the same in the way in which his father was bound to do while he was living; he shall, for this reason, lose said fief, except where he is under fourteen years of age, and, in that case, he shall not lose it. We decree that the vassal, or his son, shall also do this to the heir of the lord, after the death of the latter.

LAW XI.

Who Should Act as Judges Between a Lord and His Vassal, When a Controversy Arises Between Them Concerning a Fief.

When a controversy arises between a lord and his vassal with regard to a fief, the lord alleging that the vassal has committed some act on account of which he should lose it, and the other stating that this is not true, and that he wishes justice to be done him in court; a case of this kind, or any other like it should not be decided by the lord, but we decree that if the lord has other vassals who hold fiefs of him, he and his vassal should take one or two of them, on whom they agree, to hear and decide the matter, and as soon as they have

chosen them and given them authority to decide it, each one of them should confirm their action, and abide by what the parties aforesaid may determine. Any other disputes, however, which may arise between vassals with respect to fiefs which they hold of one lord the latter should hear and determine. And where there is a controversy between a vassal and some stranger, an ordinary judge who has jurisdiction over all cases should decide it, except where the question in dispute relates to a fief. The same rule applies when a controversy exists between vassals of two lords.

What we stated in this Title concerning vassals who hold fiefs is understood to also include vassals of other lords, as well as those who hold of kings. We explained fully in the Second Partida of this book, which treats of armies and wars, all the other ways in which vassals are bound to protect their lords, and the penalties they deserve if they commit offences against them.¹

¹ The feudal system in Spain differed, in many essential particulars, from that established in the other countries of continental Europe, and in a marked degree from that of England. Beyond the Pyrenees the obligation of feudalism, once assumed, could not be renounced, but this could be done at any time in the Peninsula, where no special agreement existed and all property received by the vassal from his lord, or its equivalent, was restored to the latter. While some of its regulations can be detected in the laws of the Visigoths, feudalism, properly speaking, was not established in Spain until the capture of Barcelona by Louis, King of Aquitania, in the ninth century, long after it had been instituted in France. The oppressive and degrading seignorial rights enjoyed by the lords of Germany, France and England, which placed the serf on a level with a beast of burden, and abandoned the virtue of the female members of his family to the unbridled caprices of his master, were never imposed on the high spirited and self respecting peasantry of Spain.

The forms of vassalage peculiar to Spain are treated of at length in the *Fuero Viejo de Castilla*. The lord has absolute authority over both the person and the property of the *solariego*. "*A todo solariego puede el Señor tomarle el cuerpo, e todo quanto en el mundo oviere.*" (El Fuero Viejo de Cast. I-VII.) Any person who infringed upon his rights was compelled to pay the vassal double the estimated amount of property taken or labor exacted, by way of damages, in addition to a heavy fine to the lord. While the vassal subject to the *Behetria* could change his lord at will, it was not requisite that the latter should belong to the same province or kingdom, and it was, for this reason, one of the most desirable of the feudal tenures.

Fiefs, from their origin, hereditary in most countries through the rendition of homage, did not become so in Spain until long after their establishment there.

The feudal system, as introduced into England by William the Conqueror, was far less complex, and conferred greater power upon the crown than that which prevailed elsewhere. The lands of the kingdom were all considered to belong to the sovereign, who distributed them among his great vassals, and they, in turn, subdivided them among their retainers in consideration of military service or rent. The land owners, without exception, and not merely the tenants *in capite*, owed fealty directly to the king. The vast holdings of the principal vassals were so distributed over the country and so opposed by the clannish proclivities and provincial and hereditary enmity of the various divisions of the conquered race, that concerted union to the prejudice of the crown was, for the most part, rendered impossible, and it was only in the case of the tyranny and incapacity of a monarch like John, that it could even be exerted. In these two points feudalism in England differed from that of the continent, where combinations of powerful nobles frequently defied or overthrew the royal authority.—Ed.

TITLE XXVII.

Concerning the Mutual Obligation Existing Between Men, by Reason of Friendship.

Friendship is something which induces persons to love one another greatly, for, as the wise men of the ancients declared, true love is the most important of all obligations. And since in the preceding Title we spoke of the mutual bonds existing between vassals and lords, by reason of natural relationship, grants, services, and gratitude, we desire here to speak of the other obligations existing between men solely on account of friendship. We shall show what friendship of this kind is; in what respect it is beneficial; how many kinds there are; how it can be preserved after it has been established, and for what reasons it can be lost.

LAW I.

What Friendship Is.

Amicitia, in Latin, means friendship in Castilian, and friendship, according to Aristotle, is a virtue which is intrinsically good in itself and profitable to human life, and that, properly speaking, it arises when one person who loves another is beloved by him, for, under other circumstances, true friendship could not exist; and therefore he stated that there is a great difference between friendship, love, benevolence, and concord. A man can love an object and receive no affection in return, as happens with lovers, who are sometimes enamored of women who dislike them. For this reason wise men have said that love conquers all things, for it not only causes a man to become attached to those who love him, but also to those who hate him. Moreover, men love precious stones and other things which have neither souls nor understanding to love those who love them. Thus it is evident that friendship and love are not one and the same thing, because love can proceed from one side only, but it is proper, under all circumstances, for friendship to exist on both sides.

Benevolence is, properly speaking, the good will which springs up in a man's heart, when he hears some excellent quality attributed to a certain person, or to something which he does not see, or with which he has no other connection; he experiencing particular fondness for the party on account of the goodness he is said to possess, and not knowing him to whom he wishes well. Concord is a virtue similar to friendship, which sages and the great lords who made the books of the law favored bringing about, so that men might live together in unity. Concord can exist between many persons, although neither love nor friendship may be present among them, but those who are actuated by common friendship must necessarily have concord among themselves. For this reason Aristotle stated that if true friendship existed among men, they would have no need of courts or magistrates to judge them, because friendship would cause them to do and observe what justice orders and directs.

LAW II.

In What Way Friendship Is Beneficial.

Great advantage and benefit result to man through friendship, so that, as Aristotle said, no man who has any kindness in his nature desires to live in this world without friendship even though he may be supplied with all the property there is in it; and the more honorable, powerful, and wealthy men are, the more need they have of friendship. There are two reasons for this; first, because they cannot profit by riches if they do not use them, and they should be employed in doing good, and benefits should be conferred upon friends; therefore those who have no friends cannot make good use of the riches they have, although they may be well provided with them. The second reason is that,

by means of friendship, the riches and honors which men have are preserved and increased, because they cannot last, in any other way, without friends, since the more distinguished and powerful a man is, the more severe a blow will be, if he lacks the assistance of friends.

Aristotle also said that other men who are neither rich nor powerful, have, at all times, need of friends, who may aid them in their poverty, and inspire them with courage in dangers which may come upon them. And, above all, he declared that a man requires assistance, no matter what his age may be, for, while he is a child, he has need of friends to rear him, and care for him so that he will never do anything which may disgrace him; while he is a youth he will the better understand and perform all his duties by the aid of his friends; and when he is alone and old, he must be provided by his friends with whatever he lacks, or assisted in what he cannot accomplish by himself through the impediments of age.

LAW III.

How a Man Should Profit by the Advice of His Friends, and What Kind of a Person Should Be Selected for This Purpose.

Men enjoy great tranquility and security when they advise with their friends. For this reason a wise man, named Tully, declared that nothing was so pleasant as to have, for a friend, a man to whom one could speak his mind as to himself. And he said in another place; "Consult with your friends in everything, where it is necessary, but, in the first place, know well who he is, for there are many who appear to be friends but are merely flatterers, and whose characters are the opposite of what they seem to be; and although persons of this kind may flatter a man, they, nevertheless, prefer to be loved rather than to love, and are always harmful to those who are attached to them." And concerning this matter another wise man said: "No pestilence can be as serious a drawback to a man in this world, as a false friend, with whom he lives and shares his secrets constantly, not knowing him, and confiding in him." Wherefore Aristotle declared that it is necessary before one man establishes friendship with another first to endeavor to become acquainted with him, and ascertain if he is good. A man cannot obtain an acquaintance of this kind except by association for a long time, because good men are few in number and bad ones numerous, and friendship cannot last except between those who, of themselves, are kind, and therefore the friendship of those who become friends before they are well acquainted with one another is easily lost.

LAW IV.

How Many Kinds of Friendship There Are.

Aristotle, who established the natural distinctions between all things in this world, said that there are three kinds of friendship: first, that of nature; second, that which a man has for his friends, from intercourse of long duration, through the affection which he entertains for him; third, that which one man has for another on account of some advantage or pleasure which he obtains, or expects to obtain from him. Natural friendship is that which a father and mother feel towards their children, and a husband has for his wife. Not only human beings who are endowed with reason have this, but also all other animals who possess the faculty of procreation, because each one of them has naturally friendship for his companion, and for the offspring born of the latter; and persons who are natives of one country have also a natural friendship for one another; so that, when they meet in some strange place, they become sociable and afford mutual assistance, whenever it becomes necessary, just as if they were friends of long standing.

The second kind of friendship is more noble than the first, because it can exist among all men who are kindly disposed; and it is superior to the former, for the reason that it arises solely from beneficence, while the other originates in a debt of nature, and it possesses all the excellences which we mentioned in the laws of this Title. The third kind, which we mentioned above, is not true friendship, because a party who is attached to another for his own advantage, or on account of some pleasure which he expects to obtain from him, as soon as he receives or fails to obtain, the benefit or pleasure which he expects to secure from his friend, the friendship between them is dissolved because it has no foundation in benevolence. There is another kind of friendship which exists according to the custom of Spain, which, in former times, persons nobly born established with one another when they agreed not to dishonor or injure one another, without, in the first place, renouncing their friendship and issuing a challenge, and this we explained in the Title on Challenges, in the laws that treat of this subject.

LAW V.

How Friendship Should Be Preserved Among Friends.

Friends should establish and observe three rules in their intercourse with one another, in order that friendship may endure between them and not be changed. First, they should always be loyal to one another in their hearts, and, with reference to this, Tully said that the good faith which a man keeps with his friends is the support and foundation of friendship, and no love can be firm in which faith does not exist, for it would be outrageous and unreasonable for one friend to ask loyalty of another when he has none himself. With reference to this, Aristotle declared that the mind of a friend should be firm, and he should not be induced to believe any evil spoken of his friend, whom he has proved to be loyal and good for a long space of time. For this reason a philosopher to whom it was told that his friend was speaking ill of him answered and said that if it was true that his friend was defaming him, he thought that he must be impelled to do so for some good purpose and not to injure him.

The second rule which friends should observe in speech is that one must avoid saying anything of the other by which he may be rendered infamous, and injury result to him on that account. For Solomon said in Ecclesiastics; "Whoever dishonors his friend in speech destroys the friendship which he has for him;" and, moreover, neither should retract, or renounce to the other, the service which they have performed, or the assistance which they have given. For this reason Tully stated, that those are evil-minded men who retract, by way of insult, the favors or pleasures which they have granted their friends, for it is not proper that they should do so, but that those who received them should return them. Moreover, friends should be careful not to reveal the secrets which they confide to one another; and, of this subject, Solomon said that whoever reveals a secret of his friend, destroys the confidence which he had in him.

The third reason is, that a man should exert himself for the good of his friends, just as he would for his own advantage. For, as St. Augustine said; "In friendship there is no rank higher than another, for equality should always exist between friends;" and Tully declared that when a man obtains some good fortune or great honor he should share with his friends the benefits which result from it.

LAW VI.

How a Man Should Love His Friends.

A man should love his friend sincerely and without deceit, but there was a disagreement among the sages regarding the amount of this affection, for some declared that a man should love his friend in the same degree that the lat-

ter loves him. On this subject Tully said, that this was not friendship with good will, but that it was, as it were, a kind of trade. There are others who declared that a man should love his friend as much as he loves himself; but these did not reason properly, because it may happen that a friend does not know how, or does not wish, or cannot, love himself, and therefore the friendship existing between a man and his friend in this way should not be perfect. Other wise men were of the opinion that a man should love his friend as much as himself, and, although these stated the matter well, Tully declared that they could have stated it better, for a man often has to do things for his friend which he would not do for himself; hence he said, that a man should love his friend as much as he ought to love himself. And because, at this time, few are found who desire to be mutually attached in this way, there are not many persons between whom perfect friendship exists. Although a man ought to expose himself to danger on account of his love for a friend, nevertheless, he should not be asked to commit a crime, or to do anything which is improper, and even if he is importuned to do so he ought not to grant such a request, because if he should become liable to punishment or disgrace for this reason he would have no excuse, though he might say that he did it for his friend; still a man should expose his person and property to the risk of death or loss in order to protect a friend and his property, whenever it may become necessary. What is found in the ancient history of two friends, one named Orestes and the other Pylades, agrees with this, for they were arrested by a king for crimes of which they were accused, and Orestes, having been condemned to death and the other acquitted, Orestes was sent for to be executed, and was summoned to come forth from the place where he was kept prisoner, and Pylades, knowing that his friend was to be killed, answered that he was Orestes, and the latter replied that this was not true, but that he himself was Orestes. When the king learned of the loyalty of these two friends, and that each of them had devoted himself to death in order to save the other, he released both of them, and asked them to receive him among them as their third friend.

LAW VII.

For What Reasons Friendship Is Destroyed.

Natural friendship, which we referred to in the laws of this Title, is dissolved for any of the causes set forth in the Sixth Partida of this book for which a man can inherit the property of his descendants. The second kind of friendship which exists by nature between natives of the same country, is destroyed when any of them becomes the open enemy of his country, or of the lord whose duty it is to govern it and maintain justice within its limits; for since he is the enemy of the country, no one has any reason to be his friend because of the natural relationship in common with him.

The third kind of friendship which one man entertains for another by reason of his kindness, is dissolved when the said friend who was good becomes bad so that he cannot be punished, or commits such a grievous offence against his friend that it is not in his power to make amends for what he has done. But friendship existing between friends should not be dissolved on account of illness, poverty, or misfortune, but that which is sincere and good is more strengthened and confirmed under such circumstances than under others. The last kind, where one person attaches himself to another for the sake of some pleasure which he obtains, or expects to obtain from him, which appears to be friendship but is not, is dissolved when the alleged friend fails to secure what he desired, as we stated above.

END OF THE FOURTH PARTIDA.

**HERE BEGINS
THE FIFTH PARTIDA
OF THIS BOOK.**

**Which Treats of Loans, Sales, Purchases, and Exchanges, and All Other
Contracts and Agreements Which Men Have With One Another
of Every Description Whatsoever.**

INTRODUCTION.

Many inconveniences and serious disputes arise among men on account of contracts and agreements which they enter into with one another. And although, in the beginning, the latter are made with the consent of both parties, it happens the greater number of times, that they subsequently change their minds, and on this account controversies arise. Wherefore, since in the Fourth and preceding Partida, we spoke of marriages and the offspring derived from them, and of all the other obligations existing among men by reason of relationship, superiority, connection by affinity, or friendship, in this Fifth Partida we shall speak of all other engagements which arise among men by reason of contracts; as, for instance, on account of loans, gifts, deposits, donations, purchases, sales, exchanges, wages, partnership, security, penalties, conventions, or any other agreements whatsoever, entered into by the consent of both parties and everything else relating to any of these matters. And for the reason that these contracts and agreements, called in Latin *contractus*, are made by men with one another, some of them being entered into as a matter of favor or affection, and others for the advantage of both parties; therefore we desire to speak here of contracts made by way of favor, because such acts are more noble and more honorable to those who perform them; as, for instance, where loans are made and gifts are bestowed without, at the time, anything being received in exchange, or as compensation for them. After this we shall speak of each one of them in turn, as is suitable.

TITLE I.

Which Treats of Loans.

A loan is a kind of contract of courtesy which is entered into frequently among men, and by means of which some receive pleasure and assistance from others. For which reason since in the Introduction of this Partida we mentioned them, we desire to explain here what they are, and in what way they are advantageous; how many kinds there are; with reference to what property they should be made; who can make them, and where this can be done; what force they have, and what penalty those should receive who do not return them.

LAW I.

What a Loan Is, and in What Way It Is Beneficial; How Many Kinds of Loans There Are; and of What Things Loans Can Be Made.

A loan is a species of contract which men make with one another, by some of them lending their property to others when they have need of it; and very great advantage is derived from this, for a man is thus assisted by the property of others just as if it was his own, and affection increases and originates among men sometimes for this reason. There are two kinds of loans, one of which is more natural than the other, and this is the case where some persons lend to others things which it is customary to count, weigh, or measure. A loan of this kind is called *mutuum*, in Latin, which means, in Castilian, something lent at the request of the party to whom it is loaned; for the ownership of any of these things passes to the party to whom it is delivered as a loan.

The other kind of loan relates to every species of property which is of a different description from the above, as, for instance, a horse or other animal, or a book or other things of this kind. A loan of this kind is called in Latin *commodatum*, which means something which one lends to another to be used and employed, but not for the purpose of obtaining the ownership of the property loaned. We shall explain each of these in the laws of this Title, and we shall commence by speaking of that called in Latin *mutuum*.¹

LAW II.

Who Can Make a Loan, and to Whom, and of What Property.

One man can loan another any of the things mentioned in the preceding law which can be counted, weighed, or measured; and by this it is understood that the property belongs to the party who lends it, or that someone else does this by his order. Moreover, we decree that as soon as the said property passes under the control of the party to whom it is loaned, he can dispose of it at his pleasure, just as if it was his own. He is, however, bound to give to the party who loaned it to him other property of the same kind, and as good as that which was loaned him, although the party who loaned it may not have expressly stated this. He should also give it at the time agreed upon between them when the property was loaned, and if no time was appointed, it should be given, according to the wish of the party who loaned it, ten days after the loan was made.

¹ The essentials of the *mutuum* of the Romans were that the property passed to the borrower, so that he could consume, sell, or otherwise alienate it, and was not bound to pay any interest or compensation for its use, it being, in fact, an absolutely gratuitous loan. Articles were required to be returned *in specie*, and of as good quality as those received by the bailee. The *mutuum* was one of the forms of the *contractus nominati*, and the borrower was responsible for the value of the property at the time it was delivered. While under the *mutuum* interest might be collected, an express stipulation to that effect, agreed to by the debtor, was indispensably necessary.—Ed.

LAW III.**Loans Can Be Made to Churches, Kings, Councils, and Minors Under Twenty-five Years of Age.**

Not only can men lend to others the things we have mentioned in the preceding law which can be loaned, but they can also lend them to kings, churches, cities and towns, and even to minors under twenty-five years of age. However, where a loan is made to a church or to any man who is a messenger of the king in any place, and who receives a loan in his name; or where a loan is made to a minor under twenty-five years of age, the party who lent it cannot claim it and is not entitled to it, except where he is able to prove that the loan was to the advantage of those aforesaid, for where it is made to the injury of any of them it will not be valid. However, if the aforesaid messenger of the king obtains the loan by a letter from the latter, by which he was granted power to do so, the king will then be obliged to pay the loan made or obtained in this manner, whether it be to his advantage or not. And because it might happen that men may be in doubt how what we have stated can be proved, as to whether the loan was to the advantage of the party in whose name it was made, or not; we decree that if the party who made the loan to the church, (or where anyone received it in the name of the king, or as the representative of any city or town, or where made to a man under lawful age,) can prove that at the time when he loaned it the party was in such great distress that he had very urgent need of it, and that it was to his advantage; evidence of this kind shall be sufficient to recover the property loaned.

LAW IV.**Concerning a Loan Made to a Son Who Is Under the Control of His Father or Grandfather.**

Where a son or grandson, while he is under the control of his father or grandfather, accepts a loan from some other party, without the consent of him under whose control he is, neither the son nor the father is bound to return said loan, nor is the surety of the son bound to do so, even if he has given one; nevertheless, if the son should return the same thing loaned to him, or some other of the same kind which did not belong to the property of his father or grandfather, the transaction will be valid, and the father cannot forbid him to do so. Moreover, we decree that where a son or grandson, who is under the control of his father or grandfather, was asked at the time when he accepted the loan if he had a father, or a grandfather, or any other relative in the ascending line, and if he was under their control, and he denied it stating that he was not; by reason of the falsehood which he told and his denial of the truth, he is bound to pay what was loaned him.

Moreover, we decree that any person who holds a public office, whether of the king or of any other lord, or of some council; or is an artisan having any trade and is accustomed to work in public; or who keeps a broker's office; or sells clothes or other merchandise, and conducts his business and sells goods just like a man who is not under the control of another, so that men may think that he is independent; he is bound to pay what he accepts as a loan, even though he may be under the control of another. We decree that the same rule shall apply where the party who is under control of another is a knight, for if he accepts a loan he is bound to pay it. This is the case in order that no one may suspect that he expended for bad purposes what was loaned him, rather than that he made use of it in matters pertaining to knighthood.

LAW V.**Concerning a Loan Made by One Minor to Another.**

Where any person under twenty-five years of age lends property to another minor, and the one who accepts the loan employs it for his own advantage, or keeps it unimpaired, he is bound to return it to the party who lent it to him. But where he is over twenty-five years of age he will be obliged to return it under all circumstances, whether he employs it for his own advantage, or keeps it unimpaired, or not. Moreover, if a loan obtained by a party under the control of another is employed for the benefit of the person under whose control he was; as, for instance, for the marriage of a sister of his, or to provide him with food or clothing, or for any other purpose which was necessary for the family of the party who was obliged to support him, or to the profit of the person under whose control he was; we decree that either the party who accepted a loan of this kind, or the one under whose control he is, is bound to pay it.

LAW VI.**Concerning a Loan Made to a Son or Grandson Who Is Under the Control of His Father or Grandfather With the Consent of the Latter.**

Where a person who is under the control of another makes a loan with the knowledge or under the direction of the party having control over him—or even where he does not direct him to do this, if he is present or consents to it—or where he makes a loan elsewhere and he sends him word by letter, or in some other way, and grants him permission; or if he afterwards pays some portion of the debt; we decree that either the party who made the loan, or the one under whose control the latter is, will be bound to pay said loan. Moreover, we decree that if the party who made the loan while he was under the control of another, should, after he becomes of age and is freed from the control of him who had charge of him, pay any portion of said debt, he is, for this reason, obliged to pay all the remainder.

We also decree that where anyone who is under the control of another goes on any mission, or to school, and makes a loan while there, he, or the party under whose control he is will be bound to pay it, to an amount equal at least to that which he might expend in food, clothing, and other necessities, while he remained in his power and in his house; and also as much more as it is estimated the rent of the house where he lives would amount to, and what should be paid to his teacher, and be expended for other things necessary for him in his studies; or for the mission on which he was sent.

LAW VII.**Concerning a Loan Made to a Party Who Has Charge of a Broker's Office, or a Clothing Store, for Another Person.**

A broker or a merchant who has a clothing-store or one of any other description, if he places said store in the hands of another party who is not under his control, and leaves him in charge, as it were in his stead; and the said party makes any loan, with or without the order of him who left him there, and employs it for the benefit of the latter, the party who made said loan is not bound to pay it, but he whose place he occupied. If, however, he did not make it by his order, or use it for his benefit, he is not then bound to pay what was loaned him.

LAW VIII.

When a Loan Should Be Returned and in What Place.

Where one man lends another anything which can be counted, weighed or measured, designating a certain day or place when and where the debtor shall pay him said loan, he is bound to pay him on the day and at the place where he agreed to, and if he does not happen to have a sufficient quantity of the same property loaned him, he should give as much in money as the property loaned amounted to and was worth. The value of all such property should be equal to what was loaned at the time and in the place where it was to be paid; and if no day or place when and where payment should be made was designated, it should be estimated and appraised according to what it was worth, at the place where the demand was made when suit was afterwards brought for it in court.¹

LAW IX.

Where a Party Admits Having Received the Loan of Some Property, How He Can Protect Himself When It Is Demanded of Him, if He Did Not Receive It.

Men sometimes inspire others with confidence and expectation that they will lend them something, and those to whom the promise is made sign a written instrument concerning the same, before the said property has been delivered to them, admitting that they have received it; and it afterwards happens that a claim is made upon them on this account, just as if the loan had actually been made to them. We decree that when a case of this kind occurs, the party who signed the instrument should complain to the king, or to others who judge in his place that the person who promised to lend him a sum of maravedis did not do so, nor count them in his presence, nor deliver them; and ask that he order the instrument drawn up with reference to the maravedis which the party promised to lend him, to be returned. If he is silent, and does not mention this before two years have elapsed after he signed the said instrument, from that time forth he cannot file such a complaint; but if a demand is made upon him afterwards, he will be obliged to pay his creditor the maravedis, just as if he had received them. If, before the two years have elapsed, he should make complaint, as aforesaid, he shall not be bound by said instrument, or be required to pay the maravedis, except where the other party can prove that he gave him and counted out to him the sum which he promised to lend him; or where the debtor who admitted that he had received the maravedis as a loan waives the defense that the money was not counted, for then he can not protect himself for this reason, if a waiver of this kind was inserted in the instrument.

¹ Of the Latin races, the direct heirs of the legal system of Justinian, the Italians have followed most closely the provisions of the civil law relative to bailments of every description. All agree, however, in the acceptance and application of the general principles adopted by the Roman jurists, as well as in the divisions of the subject and the various distinctions established by the latter.

The ancient Romans punished the fraudulent violation of his trust by the depositary with a fine equal to double the value of the property involved. "*Si quis circa res depositas aliquid dolo malo commiserit, dupli poena damnatur.*" (Leges XII Tabularum, III-1.) According to Cicero, they even went further than our rule which makes the bailee responsible for acts of gross negligence, even though unaccompanied by fraud, and held him liable for more than ordinary negligence, declaring him, when guilty, to be not less infamous than a thief. "*In privatis rebus, si qui rem mandatam non modo malitiosius gessisset, cui quaestus aut commodi causa, verum etiam negligentius, eum majores summum admisisse dedecus existimabant; itaque mandati constitutum est judicium, non minus turpe quam furti.*" (Cicero Pro. S. Rose, Oratio, 116.)

The early writers on the common law practically adopted the doctrine of the Roman jurists of the time of Justinian, that fraud alone was to be considered in the negligent acts of the depositary; but the rule as established by Coke was much more stringent, holding the bailee liable for the property delivered to him, except where an express stipulation has been made that he was to use only ordinary diligence in the care of said property.—Ed.

LAW X.**What Effect a Loan Has, and What Punishment He Should Receive Who Does Not Return It.**

A loan made by one man to another of property which can be counted, weighed, or measured, has such force that, as soon as the property passes under the control of the party to whom it was loaned, although fire may burn it, or water carry it away, or robbers steal it, or it may be destroyed in any way whatsoever, the loss is that of the party who receives the loan, and not of the other who lent the property. Moreover, we decree that where the party who received the article loaned does not return it at the time when he should, he should be compelled to pay the penalty for which he bound himself to do this; and, where no penalty was agreed upon, he shall pay the damage and the loss which the other party suffered by bringing suit for the property which he lent him. The heirs of the party who received the loan are bound to pay it just as the party himself is required to do.

TITLE II.

Concerning the Loan Called in Latin *Commodatum*.

We stated in the second law of the preceding Title that there were two kinds of loans. And since we explained there fully the first kind, called in Latin, *mutuum*, by means of which everything which can be counted, weighed, or measured, is loaned, we desire to speak here of the second kind, called in Latin *commodatum*, by which all other property which does not belong to the former class can be loaned. We shall show, in the first place, what this is; why it is so called; who can make it, and to whom it can be made; of what things this can be done and in what way; whose is the risk if the loaned property is lost, dies, or is depreciated in value; when a loan of this kind should be returned; and to what penalty the party who receives the property loaned should be liable, if he does not return it.

LAW I.

What the Loan Called in Latin *Commodatum* Is, Why It Is So Named, Who Can Make It and to Whom, and of What Property It Can Be Made.

Commodatum is a species of loan which men make to one another, as, for instance, of horses, or something of that description which the party who borrows it is to make use of until a certain time. It is understood that when this is done as a favor, or on account of affection, the party who makes the loan does not accept anything for it by way of hire, or any other compensation whatever. The word *commodatum* means something given for the benefit of the party who receives it. All those whom we mentioned in the laws of the preceding Title, who have the right to give and receive as a loan property which is accustomed to be counted, weighed, or measured, can also lend or borrow property of this kind, which includes other chattels not of this nature, as we stated above.

LAW II.

In What Way the Loan Called *Commodatum*, in Latin, Is Made, and Who Bears the Risk of the Property Loaned, if It Is Lost, Dies, or Depreciates in Value.

The learned men of the ancients decided that the loan called *commodatum* can be made in three ways. First, when the party who lends the property does so solely with the intention of conferring a favor upon the one who receives it, and not on account of any personal advantage. This is the case where one man lends another a horse, a weapon, or something of this kind of which the latter has need. With regard to a loan of this description, we decree that the party who received it is bound to take as good care of it as if it was his own property, and even better care if he can do so;¹ and, if he should not do this, and it is lost, or dies, or deteriorates through his fault or neglect, he is bound to return other property of this kind, which is just as good, to the party who loaned it to him; but, if this happens through accident and not through his fault, he is not bound to pay for it.

The second kind of loan is when the property lent is of as much benefit to the party who lends it as it is to him who borrows it; and this would be the

¹ This differs from the rule of the civil law, which required the depositary to always use greater diligence than he employed in the case of his own property. "*In rebus commodatis talis diligentia praestanda est, qualem quisque diligentissimus paterfamilias suis rebus adhibet.*" (Corp. Jur. Civ. Dig. XIII-VI-18.)

The question as to what constitutes negligence, under the most of our statutes, is, necessarily a most uncertain and elastic one, and its determination depends, of course, upon the circumstances of each particular case. As is well understood, ordinary diligence is such as the depositary exercises in his own affairs, which coincides with what is laid down in the text, and is founded upon equitable dealing and the dictates of common sense.—Ed.

case where two men are invited to dinner together by a friend, and one of them has silver drinking cups and the other has not, and the latter asks the former to lend him the said cups in order to honor and please their friend. We decree that with regard to a loan of this kind or a similar one, the party who receives it is not bound to take better care of the property than he would of his own. For this reason, where he takes as good care of it as he does of his own property, although it may be lost through his imprudence, he will not be obliged to pay for it.

The third kind is where the party who lends the property does so with the intention of honoring and pleasing himself more than the one who receives it. This would be the case where a man lent his betrothed or his wife some valuable clothes, in order that she might appear better and more elegant in his presence; and for this reason we decree that since he made the loan for his own honor and pleasure, if she loses what he lent her she is not bound to pay for it; except where she allowed it to be lost through deceit. What we have stated in this law applies not only to the property above-mentioned but to all other similar to it.

LAW III.

Who Is Responsible for Property Loaned When It Is Accidentally Lost.

Where a man accidentally loses the property which he has received as a loan, which is such that it cannot be weighed, counted, or measured, as, for instance, a horse, a weapon, clothing, or something of this kind, the party who receives it is not bound to pay for it, if it was not lost through his fault; and it is lost accidentally, and not through his fault, as, for example, where it was burned along with other property; or where a building fell on it and killed it; or where an inundation carried it away; or enemies seized it, or thieves stole it; or where it was lost at sea in some storm, or by the wreck of a ship in which a man was transporting it; or in some other way like this.

There are reasons, however, on account of which although the property may be lost through any of the accidents aforesaid, the party who received the loan will be bound to pay for it. This would be the case where anyone borrows silver drinking cups to use in his house, and takes them away by sea, or on some road, and loses them there; or where he borrows an animal for a journey, and takes it to a greater distance, and it dies, or is lost there. In cases of this kind or in similar ones, a party would be bound to pay for what he received as a loan, even though the property was lost by accident, because he opened the way for the accident to happen, by making use of said property in a way he should not have done. We also decree that where one man receives of another property as a loan for a certain time, which is not such as can be counted, weighed, or measured, and a certain day or hour is fixed when it is to be returned to its owner; if, after that day or hour, he makes use of said property, retaining it against the consent of its owner, and it is lost or dies, he will be obliged to pay for it. The same rule applies where the party who receives the property loaned binds himself when he receives it that, if it is lost, or dies, or is depreciated in value, for any of the reasons we have mentioned, he will be responsible for it.

LAW IV.

Who Shall Be Responsible Where the Party Who Borrows Anything Sends It by a Messenger, and It Is Lost on the Way.

Where a man borrows something of another which it is not customary to count, weigh, or measure, and he sends it to its owner by a reliable man whom he has been accustomed to trust in such matters or others of greater import-

ance, and while returning said property he accidentally loses it; as, for instance, if it was taken from him by force, or stolen, or he is deprived of it in any way of this kind; or if some fraud is committed against him by which he loses it; we decree that in any of these cases, or in any other similar to them, the party who lent the property, and not the one who borrowed it, shall lose it, for since he used the same care in returning it as he would have done if it had been his own, he is not bound to pay for it; but where he sends it by a man who is not reliable, and whom he is not accustomed to trust in such matters, and it is lost by his fault or through his negligence, the party who received it as a loan should be required to pay for it. Where the party who lent said property sends some man of his own for it, and the person who had it gives it to him, and he who was sent for it loses it, or spoils it, or runs away with it, the owner must lose it and not the party who borrowed it. But where the party who loaned it and to whom it belongs, sends word to the person to whom it was loaned to send it to him by some prudent man in whom he has confidence, and the person by whom he sends him this message changes it, and says that he requested him to send it to him by himself; and the party who has said property believes him, and gives it to him, and he loses it or runs away with it, the party who borrows it is responsible for the same.

LAW V.

The Heirs of a Deceased Person Must Return the Property Which He From Whom They Inherit Borrowed.

When a man dies to whom a horse, or property of this kind had been lent, his heir is bound to return it to the person who lent it. And where it happens that there are several heirs, any one of them who may have possession of said property, is bound to return it to the owner or to his heirs. Moreover, we decree that where a party who received property as a loan lost it during his lifetime, or his heirs lost it after his death through their own fault, each of them is liable for it, contributing his share according to his means; or they should buy something of the same kind and of the same quality, and give it to the owner of that which was lost. We also decree that where an article is lent to two or more men, and at the time it was loaned all of them together did not assume the responsibility of returning it, and it should be lost, they are each of them bound to pay their share of its value, and no more.

LAW VI.

A Party Who Lends Something Which Has Some Defect, Should Notify the Other Who Receives It as a Loan.

Where a man asks for the loan of a slave to serve him for a time, and said slave is a thief, and his master did not notify the party to whom he lent him of the fact, but kept silent; and the said slave should steal anything from the party who borrowed him, his master is bound to pay the value of what the slave stole from him. Moreover, we decree that where one man lends another a cask or an earthen jar, or any other vessel to hold wine or oil, and said vessel was broken, or of such a kind that the wine or oil would acquire a bad taste from it, or whatever is put into it would be spoiled or deteriorated in any other way, and the owner of said vessel was aware of this, and kept silent and did not mention it to the party to whom he loaned it; he is bound to pay him for any loss which he may suffer on account of the vessel which he lent him.¹

¹ This is the *culpa lata* of the civil law, which made the bailor responsible for negligence resulting in loss to the bailee. (Corp. Jur. Civ. Dig. XIII-VI-5.)—Ed.

LAW VII.**A Man Who Borrows a Slave or a Horse Should Provide it With Food, While in His Possession.**

Where a man receives a horse or a slave, or any other chattel of this kind as a loan from another, the party who receives it is bound to provide food for it out of his own property, as well as to furnish it with everything that is necessary so long as he makes use of it. But if it should happen to be sick, without the fault of the party who loaned it, everything necessary to cure said sickness, not only the medicine but also the fees due the physician for his services, must be paid by the owner of said property, and not by the party who borrowed it.

LAW VIII.**Anyone Who Loses Borrowed Property and Pays Its Owner for It Is Entitled to It if It Is Afterwards Found.**

Where anyone loses property which he received as a loan, and after it is lost makes reparation for it to its owner by paying him for it, and the owner afterwards finds said property which was lost; he has the choice to keep it for himself, if he desires to do so, and to return the other the price he received for it, or to keep the price for himself and give the other party the property; and if a party who is not the owner should find it, he who lost it can demand it of him, just as if it was his own, because he has already paid the owner the price of it.¹

LAW IX.**When a Party Who Receives Property As a Loan Should Return It and to What Penalty He Is Liable if He Does Not.**

Where any one receives, as a loan from another, a horse or something of that kind, for a designated service or for a certain time, we decree that as soon as the service has been performed or the time has elapsed, the party is bound to return said property to its owner, and he has no right to retain it beyond that time as a pledge, even if he who loaned it to him, owed him a debt or something else; except where the debt was for the benefit or on account of the said property which he received as a loan, and even then it is necessary that it should have been contracted after the loan was made and not before. For in a case of this kind the party can hold it until he has been reimbursed for the expense which he incurred on account of the property loaned to him, said expense being of such a character that he can claim it according to law.

The penalty which those should receive who do not return property which is loaned is as follows, namely: they must surrender it to the party who loaned it, along with the costs and expenses which he incurred by bringing suit for it. And, moreover, if the property is lost or dies, or is depreciated in value after the suit has been begun by complaint and answer, those who received it as a loan will be responsible.

¹ Under the laws of Spain, France, and Italy, the bailor does not enjoy any such privileges, but after he has once been paid for the lost property he has no further right in it.—Ed.

TITLE III.

Concerning Deposits, Called, in Latin, *Depositum*.

Depositum, in Latin means, in Castilian, a deposit. Wherefore, since in the previous Titles, we spoke of loans from which those who receive them from others obtain favor and assistance, we desire here to speak of deposits, by means of which those who have charge of them give pleasure and display affection to those from whom they receive them. We shall show what a deposit, which is called, in Latin, *depositum*, is; whence it derived this name; how many kinds there are; what property one man can commit to the care of another; who can do so and to whom; of whom it can be claimed and when; to whom it should be returned and in what way, and what penalty he deserves who is not willing to return it.

LAW I.

What a Deposit, Called in Latin *Depositum*, Is, Whence It Derived this Name, and How Many Kinds There Are.

A deposit, called in Latin *depositum*, takes place when one man gives another charge of his property, having confidence in him. It derived this name from a pledge, which means to place what one desires to deposit actually in charge of another. There are three kinds of deposits. First, when anyone without being oppressed with any trouble, places another party in charge of his property. Second, where anyone is compelled to do this in time of trouble, which would be the case if his house in which he had property, burned or fell down, or if his ship in which he was carrying his property was wrecked; and either of these misfortunes having happened, he should at that time give part of said property in charge of someone else, for the purpose of saving it from loss. The third is, when men are engaged in a dispute with regard to certain property, and place it in the hands of some trustworthy person, committing it to his charge until the controversy has been settled in court.

LAW II.

What Property Can Be Placed in Deposit.

Property of every description can be placed in the care of another, or on deposit, but properly speaking it is more customary to do this with movable property than with any other kind. Moreover, we decree that a man receives property as a deposit when he is not paid any price or compensation for taking care of it. For if he does receive compensation, or he is promised that it will be given him, it would not be a case of deposit but of hire, since he received some specified sum for taking care of it. For this reason a person of this kind would be more obliged to take good care of said property placed in his charge in this way, than he otherwise would. We also decree that the ownership and right of possession of the property given in charge do not pass to the party receiving it, except where it is of such a nature that it can be counted, weighed, or measured, and when he received it, it was counted, weighed, or measured to him, for in this case the ownership would pass to him. The party to whom it is given in charge will, however, be required to return it, or to give an equal amount, and of the same quality as that he received, to the party who placed it in his care.

LAW III.**Who Can Place Property on Deposit, and to Whom This Can Be Done.**

Any man who has property under his control can place it in charge of, or on deposit with, any one else, whether he be priest or layman, a member of the secular clergy, a freeman or a slave. The party who received the property is, however, bound to take care of it well and faithfully, so that it will not be lost or depreciated in value through his fault or any fraud of his. And we decree that the property is lost through his fault when he does not take care of it in the way in which the majority of men are accustomed to take care of their own property. But if the property is lost through the negligence of the party who had charge of it, he will not be obliged to pay for it except in three instances. First, where the party who received the property binds himself to pay for it, even though it is lost merely by negligence. The second case is, where the party who received the deposit himself asks that it be placed in his charge, and the other party does not ask him to do this. A third case is, where he receives compensation for taking charge of property placed with him on deposit. In any of the cases aforesaid, where the property given in this way for safe keeping is lost or deteriorated, through neglect or want of care of the party who received it, he will be obliged to pay for it. And we declare that property is lost by negligence when the party who has it in his possession does not use that diligence and care which every prudent and intelligent man should exercise.

LAW IV.**Where a Person Accidentally Loses Property Held by Him for Safe Keeping, He Is Not Bound to Pay for It, Except in Certain Cases.**

Sometimes accidents happen to property which one man has left with another for safe keeping, so that said property is depreciated in value, or is lost. This would be the case where the property was an animal, and it died a natural death or some one else killed it without the fault of the party who had charge of it, or where it is taken by robbers, or stolen. In any of these cases or in others like them, the party who had charge of it would not be obliged to pay for said property, except for four reasons. First, where at the time he took charge of it he bound himself to pay for it, in case it should be lost in any way. Second, when the party who received the property for safe keeping refuses to return it to its owner, he having the power to do so; for if after the former brought suit for it, or where the suit had been begun by complaint and answer, said animal should die or be lost, the party who received it will be obliged to pay for it. Third, where the party who held it for safe keeping, through his own fault or through fraud, opened the way for an accident by which it was lost or died. Fourth, where the property is committed for safe keeping principally for the benefit of the party who received it and not for that of the party who committed it to him; in any of these cases, although the property committed for safe keeping is lost or dies, or is diminished in value by accident, the party who received it for safe keeping is bound to pay for it to the party who gave it to him in charge or placed it in his care, or to pay his heir.

LAW V.

Who Has the Right to Claim Property Committed to Anyone for Safe Keeping; When this Should Be Done; to Whom Said Property Should Be Returned, and in What Way.

A party who receives property for safe keeping—as well as his heirs—is bound to return it to the person who entrusted him with it, or to those who inherit from him, whenever they ask for it. And although the party who commits property to his care may owe him something, he who received it for safe keeping has nevertheless no right to retain it by way of security, called in Latin *compensatio*, which means the diminution of one debt by means of another, but he should at once deliver said property, and afterwards he can bring suit for what is owing to him. If, however, the said property received by anyone for safe keeping was in dispute between two or more men, or both of them should commit it to him in trust, the party who received it in this way will not be obliged to deliver it to either of them, until the dispute or the controversy concerning said property has been decided in court, or the parties come to an agreement. Then he should return it according to the agreement made when he received it, or according as it was settled between the parties that it was to be returned. The property committed for safe keeping should be surrendered with the rents and profits derived from it and all its improvements.

LAW VI.

For What Reasons a Party to Whom Property Was Committed for Safe Keeping, Is Not Bound to Return It to the Party Who Committed It to His Care.

There are four reasons for anyone of which a party who received property for safe keeping is not bound to return it to the person who gave it to him, or to his heirs. First, when the property committed to him is a sword or a knife, or some other arm which men use to wound or kill; for if it should happen that the party who gave him charge of said weapon afterwards becomes insane, he should not return it to him so long as his insanity lasts, and this is to prevent him from doing some injury with it. Second, when the party who gave him property for safe keeping is banished for some crime which he committed, or the king orders all his property to be confiscated; in this case everything which he had committed for safe keeping, before said crime was committed, shall belong to the king and not to his heirs. Third, where a robber gives property to anyone for safe keeping, it being part of what he obtained by theft, and when he claims it, the person from whom it was stolen comes with him and tells the party who holds said property not to surrender it to said thief, because he wishes to prove that it is his and that it was stolen from him; in that case he should not return it until it has been proved whether said person told the truth, and if this cannot be proved it should be returned to the one who gave it to him for safe keeping. Fourth, where one man gives another for safe keeping some property which he has stolen from him, for the party who has charge of said property is not bound to return it to him, as soon as he ascertains that it is his own, if he proves that this is the case.

LAW VII.**Property Placed for Safe Keeping in a Church or Some Other Holy Place Should Be Returned.**

When a man deposits any thing for safe keeping in a church or monastery, with the consent of prelate or the chapter of said church, they are bound to return said property to the party who committed it to their care, just as any individual should do who has charge of said property. The same rule applies if, when the property was committed for safe keeping, either the prelate or the chapter were present, and were silent and did not show any opposition, although the party may not have left it under their direction or with their consent; for when it is left in charge of one of them, without the knowledge of the others, then that party alone, and not the prelate or the chapter, will be bound to return it, except where it is proved that said property was given or expended for the benefit of the church, for in this case all would be bound to pay for it.

LAW VIII.**Property Committed to Anyone for Safe Keeping by a Man in Time of Trouble, or for Any Other Cause, Shall Be Returned, and What Punishment a Party Who Refuses to Do this Should Receive if Convicted of It.**

Where a man is in great distress on account of a fire which has consumed the house which contained his property; or where it is carried off by an inundation; or where said property was in a ship which was in danger of being destroyed; and, on account of any of these calamities or others similar to them, he commits any property, which he feared might be lost, for safe keeping to another party, and the latter who received it denies this when the property is claimed of him, and it is subsequently proved against him; he shall pay double the value of said property, and should do this because he is guilty of great wickedness in denying that said property was committed to his charge at such a time when the owner was in great distress for some of the reasons aforesaid, and was unable to ascertain whether the party to whom he gave the property in charge, was, or was not, a trustworthy man. A party, however, who denies receiving property committed to him for safe keeping in any of the ways we mentioned in the second law of this Title, and it is proved against him in court, shall be disgraced for this reason and be rendered infamous, and shall return the property committed to his charge, along with all costs, damages, and losses which the other party may have suffered on this account, and said damages and losses shall be established by the oath of the party who committed said property to him for safe keeping. The estimate of these, however, should be made by the judge in his discretion, always carefully considering what kind of a man the party is who thus makes oath. We decree that said losses shall be understood to be any damages which resulted from the property not being returned when it was demanded, and not what he might have been able to earn by means of it. Damages which might result from this cause would be those suffered by the party where he had to pay money or give other property upon a certain day under a penalty or a fine, or in some other way like this; and, for the reason the said property was not returned to him at the time when he was entitled to it, he became liable to said penalty or fine. And where the property placed in safe keeping is of such a character that it spontaneously yields income, the

party is bound, in addition to the property itself, to surrender all profits which he received from it after it was placed in his charge, and which the owner of the same or his heirs could have derived from it after they claimed it.

LAW IX.

Property Received for Safe Keeping by a Deceased Person in His Lifetime Should Be Returned Before Other Debts Are Paid, Except in Particular Cases.

Ready money or any other kind of gold or silver, or any species of property that it is customary to count, weigh, or measure, and which is received by anyone for safe keeping for another, where the party who received said property dies before returning it, is so privileged that it should be delivered and paid before any of the other debts owed by the deceased, except where, before said property was received for safe keeping, a debt had been incurred for the payment of which the person had especially pledged all his property, or a portion of it; for in this case the said debt should be paid before the property committed to him for safe keeping is returned. The same rule will apply where a debt was contracted on account of the burial of the deceased; or where the party who holds the property for safe keeping is indebted to the other for maravedis which he loaned him for the purpose of constructing a ship, or something of this kind which would be in a fair way to be destroyed if it was not repaired; or where the deceased owed something to his wife which he had given her by way of dowry; or where he had previously entered into some contract with the king by which he had encumbered his property; or on account of crimes which he had previously committed, and for which he had to pay certain fines; in these instances said debts ought to be paid before property committed to him for safe keeping is returned. But other property placed in safe keeping which cannot be counted, weighed, or measured, where it is found among the property of the deceased, and proved to have been placed in his charge, should, in every instance, be delivered to its owners or his heirs before any other debts are paid, no matter of what nature they may be.

LAW X.

Expenses Incurred by Reason of Property Deposited for Safe Keeping Should Be Paid to the Party Who Incurred Them.

Where a party who has charge of property belonging to another for safe keeping, is put to any expense for the benefit of said property, although he has the right to recover said expense, he has nevertheless no right to retain the property as security for the same, but he should restore said property to the owner, whenever he asks for it.¹ Moreover, we decree that said owner is bound to reimburse him for the expenses which he incurred on this account. We also decree that if any man commits a slave to another for safe keeping, knowing that he is a thief, and does not inform the other of the fact, and said slave steals anything from the person who had charge of him, his owner is bound to pay for what he stole. Where the party who committed him to his care was not aware of this, he has the choice to pay for what is stolen, or to relinquish the slave by way of amends for the theft which he committed.

¹ The Italian law is more considerate of the rights of the depositary, and gives him a lien on the property until all claims and expenses growing out of its care and preservation have been satisfied. "*Il depositario può ritenere il deposito sino all' intero pagamento di tutto ciò che gli è dovuto per causa del deposito stesso.*" (Cod. Civ. d' It. III-XVIII-4. Art. 1863.) The French and Spanish Codes contain similar provisions. (Cod. Civ. de Fran. III-XI-4. Art. 1948. Cód. Civ. de Esp. XI-II-5. Art. 1780.) --Ed.

TITLE IV.

Concerning Gifts.

Giving is one way to show favor and affection which is practiced by men with one another, and it is more perfect and better than those we mentioned in the preceding Title. For a person who loans his property, or places it in safe keeping, does so with the intention of recovering it, but he who gives it relinquishes it altogether. Wherefore, since in the preceding Titles we have treated of loans and deposits which men make with one another for the purpose of displaying affection and giving assistance, we desire here to speak of gifts, which are made through the favor or kindness of those who bestow them, or on account of the merit of those who receive them. In the first place, we shall explain what a gift is; who can make it, and to whom it can be made; of what things it may consist, and in what way it may be given; and we shall state afterwards for what reasons a gift is annulled after it has been made; and we shall also speak of everything else appertaining to this subject.

LAW I.

What a Gift Is, Who Can Make It, to Whom It Can Be Made, and of What It May Consist.

A gift is a good act born of nobleness and kindness of heart, when it is made without any compulsion. Every free man over twenty-five years of age can give away his property, or a portion of it, to whomsoever he wishes, even though he may not know him, only the party to whom he gives it must not be one of those forbidden to accept a gift by the laws of this our book. Where, however, the party who makes a gift is insane or has lost his mind, or is a spendthrift who has been forbidden by the judge of the district to dispose of his property, a gift made by any such person will be void, although one made to him will be valid.

LAW II.

What Men Cannot Make Gifts.

Where it is known that some man has endeavored to bring about the death of the king, or to cause him some personal injury, or to plot a division of his kingdom or any portion of it; such a person cannot give away his property or any part of the same, from the day on which he was impelled to commit or advise such wickedness, and if he does do so his act will not be valid. We decree that the same rule shall apply to such as exert themselves to compass the death or injury of those whom the king has especially selected as his chosen and honored advisers. We also decree that where a man has been condemned as a heretic by a decree of the Holy Church, no gift which he subsequently makes shall be valid. But where anyone has been accused of any other offence, although it may be of such a nature that if he is convicted of it he should be put to death, or sentenced to banishment for life; we decree that any gift which he may make, up to the day when sentence is pronounced against him shall be valid, although any made after said sentence will be void. We also decree that where a gift has been made before the offence was committed it will be valid, although he may be accused and convicted afterwards.

LAW III.**When Children Can Make Gifts and When They Cannot, and When a Gift Made by a Father to His Son is Valid.**

A son or grandson under the control of his father or grandfather cannot make a gift unless with the consent of the party under whose control he is, except where he is a knight who has obtained booty by means of knighthood, or someone else who has obtained property by one of the means called, in Latin, *castrense vel quasi castrense peculium*: for he has a right to make a gift of what he has obtained in this way without the consent of the party under whose control he happens to be at the time. However, where a son or grandson has separate property which his father or grandfather has given him by means of which to make a profit, although said stock may belong to the property of his father or grandfather, he who has possession of it has a right to give some of it to his mother, his sister, or his niece, or to any of his other male or female relatives, on account of marriage, or for any other purpose for which they are in need of it, provided it is proper, suitable, and right. We decree that the same rule shall apply where he bestows such property as salary on one of his teachers who is giving him instruction in some science, art or trade; but he cannot do this under any other circumstances. Where a father gives some of his property to one of his sons, the gift will not be valid, for the son to whom it is given, if he has other brothers, will be bound after his father's death to produce it and divide it with the others, or to include it in his share of the estate, by delivering to each of the other brothers an amount in proportion to the value of the gift made to him by his father, except where the father creates his son a knight, and gives him a horse and arms; or causes him to be taught some science; or gives him books by which he may learn it. For a gift made in any of the ways aforesaid will be valid, and he will not be bound to produce it for partition with his other brothers.

LAW IV.**How a Gift Can Be Made.**

A gift can be made in four ways. First, when it is made without any condition; second, when the party who gives it imposes a condition with the gift; third, when the party who makes and he who receives the gift are present at the time; fourth, when the party who desires to make the gift is in another country, and in this case he cannot make it except by letter, or by some trusty messenger, whereby he sends word especially what he desires to give. When a gift is made simply by letter or by words, and it is not delivered to the party to whom it was made, the party who makes it, or his heirs, will be bound to deliver it. This, however, should be understood in the following way, namely: where the party who is to make the gift is so wealthy that he has, of what is left him, so much property that he can live in comfort, and not have to ask for assistance from anyone else, he is absolutely required to deliver it, but where he would not have enough left to live upon, if he did so, he will then not be bound to make the gift in full.

LAW V.**How a Gift Made Under a Condition Is Valid.**

Where a gift is made by one man to another subject to a condition, as if the party who makes it should say; "I will give you such-and-such a field, or such-and-such a piece of property, if your father will release you from his

control," and the condition is complied with, the gift will be valid, and if there is a failure to comply therewith, it will not. However, if the father happens to die before the son is released from his control, although the condition may not be complied with in the way which the party who made gift intended, it will be valid because it was complied with by the death of the father, and the son was released from his control for this reason. For in this case and in all others like it, where a condition is imposed, and it is complied with in any other way whatsoever according to the wishes of the party who imposed it, the gift to which it relates will be valid.

LAW VI.

In What Way a Gift Is Valid, Which Is Made by One Man to Another Under Some Agreement.

Men are at times induced to make gifts to others on account of some certain matter or for special reasons, so that if they had not such inducements they might not, perhaps, make the gifts. This would be the case where one man gives another a sum of maravedis or a tract of land, stating specifically when he makes the gift that he does so in order that the other may be furnished with a horse and arms for the purpose of rendering him service; or where he gives it to some laborer, or to any other man whomsoever, and tells him plainly that he gives it to him for some work or service which he is to perform for him. Wherefore, we decree that where the party who received the gift in the manner aforesaid complies with the contract or agreement, or does the service for which the gift was made, the latter becomes in every respect valid; and where he does not comply with his contract, or does not do so properly, he can be compelled to perform what he promised, or can be deprived of the gift which he received. Moreover, we decree that where one man gives another a vineyard, a garden, a tract of land, or any other property in this way, stating specifically when he makes the gift that he gives him said property in order that, out of the crops that he obtains from it, he may bestow a specified portion upon certain men for their support; or employ it for the rescue of captives; or for some other purpose like these; and if the party who receives the gift in this way accomplishes the purpose for which it was given, the gift shall be valid, and if he does not do so, it can be revoked. And every kind of gift mentioned in this law is called in Latin *sub modo*, which means in Castilian a gift made in another form.

LAW VII.

Concerning a Gift Made Until a Certain Day, or Within a Specified Time.

A gift can be made until a certain day or within a specified time, and this would be the case where the party who makes the gift says to the other; "I give you such-and-such a tract of land, or such-and-such property, for you to work on or cultivate and take the profits of the same, until such-and-such a day or until such-and-such a time, and after said time you must relinquish it, and it will belong to my heirs;" or to any other man whomsoever who is mentioned as being entitled to it. We decree that a gift made in this way shall be valid until the day or the time designated by the party who made it, and that, from that day forward, the heirs of the party who made the gift, or the other party mentioned who is to have it, shall be entitled to its possession and ownership. And if when the party made the gift he did not indicate to whom it would belong after said date, we decree that those who inherit the other property of the party who made the gift shall be entitled to the same.

LAW VIII.**Gifts Which Men Are Induced to Make for the Reason That They Have No Children, Are Void After They Have Any.**

Men are induced sometimes to make gifts for the reason that they have no children, and have no hope of having any. Wherefore we decree that where anyone for a reason of this kind gives all his property or a great portion of it to someone else, and afterwards has a son or daughter by his lawful wife whom he married subsequently, as soon as he has such a child the said gift is revoked for this reason and becomes absolutely void. And where anyone has legitimate children and desires to make a gift to another person, he can do so in such a way that said children will always have their lawful portion, not only during the life of their father but after his death. The said legitimate portion is explained in the Title concerning the Appointment of Heirs, and where a father makes a larger gift than this, his children can revoke it, so far as it affects their legitimate share.

LAW IX.**What Amount of His Property a Man Can Give Away, and Whatever He Gives Beyond Said Amount Can Be Revoked.**

An emperor or a king can make a gift of whatever he desires, with or without committing it to writing, and it will be valid. We decree that other men can do the same thing when they desire to give anything to the emperor or the king, for it is proper that since the latter can make gifts in writing or without it, men should be able to give them whatever they desire in the same way. However, we decree that when the emperor or king makes a gift to a church or a religious order, or to any other person whomsoever; as, for instance, to a city or castle, or to any place where there is a town, or which becomes inhabited subsequently; and when he gave it he granted by his privilege that he bestowed said gifts along with all the rights which he had, or was entitled to have in said property, not reserving anything; it is understood that he gave the same with all the taxes and revenues which it was accustomed to, and did pay him. However, it is not understood that he gives any property belonging especially to the sovereignty of the kingdom, as, for instance, the power of coining money, or pronouncing sentence involving the shedding of blood. But where all these things are inserted in, or granted by, the privilege conferring the gift, in this case they pass to the community or the person to whom said gift is made, except that appeals from that locality should be made to the king who conferred the grant and to his heirs, and they should make war and peace according to his orders.

We also decree that every man can make a gift, with or without committing it to writing and can give as much as he desires, for the purpose of ransoming captives; or rebuilding a church or a house which has been destroyed; or by way of dowry; or as a donation made by reason of marriage. We also decree that where a man wishes to make a gift to some church, religious community, or hospital, he can do so without committing it to writing. If, however, he wishes to make a gift to another man or to some other community, he can do so without a written instrument where the property is worth no more than five hundred maravedis of gold; but if he attempts to make a larger donation than the one aforesaid it will not be valid, except where he does so in a written instrument, and with the knowledge of the chief judge of the district, where the donation is made.

LAW X.**A Gift Can Be Revoked On Account of Ingratitude.**

Men are sometimes ungrateful to those who give them anything, or show them some kindness, and for this reason the wise men of the ancients considered it proper that such persons should not remain unpunished, and they established four reasons, for any one of which, the property which was bestowed upon them, might be lost. First, when the party who received the gift is ungrateful to the person who gave it to him, causing him great dishonor by his speech, or accusing him of some offence for which he would be liable to be put to death or lose a limb, or be considered infamous, or forfeit the greater portion of his property if he were convicted of it; for although anyone else can speak against the person of the party who made the gift, the man who received it cannot, and should not do so. Second, when he actually does him wrong by laying violent hands on him. Third, when he commits great injury to his property. Fourth, when he endeavors in some way to compass his death. Where a woman who has a child by her husband, after the death of the latter, makes a gift to her son and marries another man, although we stated above that there are four reasons for which one can revoke a gift, in a case of this kind there are no more than three. First, where after the gift the son endeavors to compass the death of his mother. Second, where he lays violent hands on her. Third, where he exerts himself to cause her to lose all her property, or the greater portion of it. The mother can revoke a gift made by her to her son in any of the three cases aforesaid.

The party who made the gift can impose and state the reason why a gift may be revoked on account of ingratitude, but if he is silent during his lifetime his heirs cannot revoke said gift, or file a complaint afterwards.

LAW XI.**What Gifts Made by Men When Ill Are Valid, and Which Ones Are Not.**

Men who are afflicted with illness, or who are apprehensive of other dangers which they do not think they can avoid, sometimes make gifts, and for this reason we desire to speak here of donations of this kind. We decree that a gift made voluntarily by a man when he is ill and fears death or some other danger shall be valid. A gift of this kind can, however, be revoked in three ways. First, where the party to whom the gift was made dies before the one who made it. Second, where the party who made it recovers from his illness, or escapes the danger which induced him to make said gift. Third, where the party changes his mind before he dies. A gift of this kind can be made by every man who has the power to make a will, and it should be made in the presence of at least five witnesses. And although we stated in the Title concerning Wills, that a son who is under the control of his father cannot make a will, nevertheless he can make a gift of this kind with the consent of his father, and it will be valid. Above all, we decree that where a man makes a gift through compulsion employed against him or on account of fear that he will be killed, such a gift shall not be valid.

TITLE V.

Concerning Purchases and Sales.

Purchase and sale is one kind of contract of which men frequently make use for the reason that it is something that cannot be avoided. Wherefore, since in the preceding Title we spoke of Gifts we desire to speak here of Purchases and Sales. We shall show what a sale is; who those are who can make one, and in what way it can be done; what things can be sold; and to whom the profit or loss of the property sold belongs if it is diminished or increased in value. We shall also show what matters and contracts should be observed, and made between vendor and purchaser, and, above all, we shall explain for what reason a sale can be set aside after it has been made.

LAW I.

What a Sale Is.

A sale is a species of contract which men enter into with one another, and it is made with the consent of the parties for a specified price on which the purchaser and vendor agree.

LAW II.

Who Can Make a Sale and Who Cannot.

We decree that those men can make a sale who are such as have power to bind one another. For this reason a sale made by a father to his son who is under his control, or a son to his father, will not be valid, because no obligation can be entered into between them, for although they may be two persons according to nature they are considered but one according to law. But where a son has earned some property of the kind called *castrense vel quasi castrense*, as we stated in the Title which treats of the authority which fathers have over their children, a son has a right to make a sale of such property as this to his father.

LAW III.

No One Can Be Compelled to Sell His Own Property.

Neither force nor compulsion should be employed to induce anyone to sell his property, nor, on the other hand to purchase, if the party is not willing to do so; and where anyone does this through fear his act will not be valid. Where, however, two men own a slave together, and one of them wishes to emancipate him and the other does not, the one who wishes to set him free has a right to purchase the share of the other, although he may not desire to sell it, and where he offers him a suitable and proper price for said slave, according to the opinion of reliable men, he can be compelled to accept it by the judge of the district, although he may not wish to do so, and release the slave in order that he may be set free. We decree that the same rule shall apply when a party has a slave whom he oppresses unreasonably, as where he gives him little food, or wounds him, or scourges him severely, or orders him to do something contrary to reason and justice. For any cause of this kind, or others similar to them, an owner can be compelled to sell his

slave according to law, and he will be obliged to sell him even though he is not willing to do so, as we stated in the Fourth *Partida* of this our book, in the Title which treats of Liberty.¹

LAW IV.

Guardians Cannot Purchase Any of the Property of Minors Under Their Charge.

Those persons who are the guardians of minors under fourteen years of age, are called *tutores* in Latin. Persons of this kind should not alienate the property of minors, except where there is such necessity for it that they cannot do otherwise, or where it is greatly to their advantage, and even then it must be done with the full knowledge and consent of the judge of the district. Nevertheless, we decree that no guardian can purchase any property belonging to anyone under his control, except where he does so with the consent of the judge of the district, or with that of some other party who, along with himself, is acting as guardian; and it is necessary that whatever he purchases from him in this way shall be to the profit of said minor and not to his injury. Where the minor finds that he has been defrauded by reason of said sale, he can, within four years after he has become of age, repudiate it, as we have said in the laws which treat of the guardianship of minors and their property.

LAW V.

Neither Adelantados Nor Ordinary Judges Can Purchase Anything in the Country Where They Have Jurisdiction.

An *adelantado*, or any other judge appointed to render decisions or dispense justice, in any country, city, or town, cannot purchase lands or houses, nor can anyone else do this for him, nor can any member of his family do so in the country or district where he presides, except so far as relates to things which he cannot dispense with; as for instance, what he needs to eat and drink and to use for clothing. Where, however, any of the aforesaid parties has an estate or other property which he inherited from his father, or from any other relative, or which he obtained in any other way, before he was chosen for this office, he has a right to sell it to persons living in said district.

LAW VI.

In What Way a Purchase and Sale Should Be Made.

A purchase and sale can be made in two ways, one in writing and the other without it. The one made by a bill of sale is where the purchaser says to the vendor; "I wish a bill of this sale drawn up." A sale made in this manner, although the purchaser and vendor may have agreed upon a price, is not complete until the bill has been drawn up and accepted, for the reason that, before this, either party has a right to change his mind. But after the bill has been drawn up and witnessed neither of the parties can withdraw or oppose the sale in order to abrogate it. A sale can be made without a written

¹ Under the Visigothic Code, while the consent of the other owners was indispensable, they could not be compelled to sell their interest in the slave, as the law did not favor emancipation. When it did take place, the formal act of manumission had to be performed in the presence of an ecclesiastic, otherwise it was void. "*Si quis autem commune mancipium vult a iugo servitutis absolvere, prius, cum consortibus suis dividat et suae vindicet potestati, aut certe cum his qui ei consortes sunt, id fieri vel pretio vel precibus elaboret, et sic, si voluerit, praesente presbytero vel diacono manumittat, et libertas data firmetur.*" (For. Jud. V-VII-2.)

By the Louisiana Code, a master could not be forced to sell his slave, except, first, when his co-proprietor demanded it for partition; and second, when he had been convicted of cruel treatment of said slave, for then, in addition to the penalty imposed for the offence, the court ordered the slave to be sold at public auction to deprive his master of power over him. (Civ. Cod. of La. VI-3-Art. 192.)--Ed.

instrument when the purchaser and the vendor agree upon the price, and both consent to it, so that one receives the property and the other the price, and no mention is made of a bill of sale; for in this case we decree that the sale will be concluded when it is made in this way, although no earnest money be given by the purchaser to the vendor, by means of which both would be compelled to comply with the contract which they have agreed upon.

LAW VII.

Who Is Entitled to the Earnest Money Given by Reason of Purchase, Where a Sale Is Not Concluded.

Some men give earnest money in purchases, and it happens afterwards that one of them changes his mind. Wherefore, we decree that where a purchaser changes his mind after he gives earnest money he shall lose it, but where the vendor changes his mind afterwards he must return double the amount of the earnest money to the purchaser, and the sale shall not, after that, be valid. Where, however, the purchaser gave the earnest money, and said that he gave it as such, and gave it as a part of the price, or merely to show his consent to the contract, in this case neither of them can withdraw, nor can the sale be set aside so as to be invalid.¹

LAW VIII.

A Sale Can Be Made Although the Purchaser and the Vendor May Not Be in the Country When They Make It.

Where a purchaser and a vendor are present, they can make a sale, and it can also be made, by means of letters or by messengers, where one of them is in one place and the other in another, both consenting to the sale, the purchaser receiving the property and the vendor the price. We also decree that a sale can be made even though the property may not be in the presence of the purchaser and the vendor, where both give their consent, as aforesaid.

LAW IX.

The Price Should Be Specifically Stated in the Sale.

For a sale to be valid the price agreed upon by the purchaser and the vendor should be definitely settled, for if the vendor should say; "I sell you this property for whatever you wish to pay for it, or whatever I want to ask for it;" a sale made in this way would be invalid. Where, however, the purchaser and vendor agree upon some other man, and give him the power to fix

¹ The *arrha*, or earnest money of the Romans, was merely a penalty imposed for non-performance of the contract of sale by the purchaser. The general provisions of the civil law and those of the *Partidas*, which are copied from them, almost exactly coincide in every respect.

The Visigothic Code was unusually indulgent to the vendee. In case he was prevented by illness or unavoidable necessity from perfecting the sale, and did not appoint an agent to act for him, the contract was considered cancelled, and he was entitled to the return of the earnest money. "*Quod si constituto die nec ipse successerit, nec pro se dirigere voluerit, arras tantummodo recipiat, qual dedit, et res definita non valeat.*" (For. Jud. V-IV-4.) No mention is made of earnest money in the Gentoo Code, and the article could be returned at any time. "If a person having purchased any undamaged commodity, afterwards returns it back to the vendor, at whatever price the purchase was made, the vendor shall retain one tenth of such price, and return the other nine parts to the purchaser, receiving back at the same time the purchased goods." (Gentoo Cod. XI-1.) A regulation of this kind, which must render all commercial transactions unstable and precarious, could hardly be maintained in a community dependent upon ordinary trade for all its existence.

At common law, some definite act was deemed essential to bind the bargain, and earnest money was merely considered part payment. Most nations, civilized as well as barbarous, have recognized this custom. The civil law, unlike that of England, made a distinction between something which was given as *arrha* and the payment of a part of the stipulated price. Where the vendor refused to carry out his agreement, he was obliged to pay twice the value of the *arrha* to the purchaser. This rule, however, did not apply to cases where what was delivered was understood to be the payment of a part of the consideration.—Ed.

the price for which the property should be sold, then if he who is authorized to fix the price does so, the sale will be valid. And if the said party fixes the price unreasonably and at much more or much less than the property is worth, the price should then be settled by the judgment of reliable men. Where he upon whom the parties agree dies before fixing the price, the sale will not be valid.

LAW X.

How a Sale Can Be Valid Although No Certain Price Was Mentioned.

Where a purchaser and a vendor agree to sell one another property for as much money as a purchaser has in a chest, or a bag, or a valise or anything else whatsoever, the sale will be valid if any money is found there, no matter what the amount is, although it may not be as much as said property is worth. But where no money is found the sale shall then be void, because no sale can be made without a price.¹ Moreover, we decree that where one man sells another property, both of them having agreed that the purchaser can have it for the same price at which the party who sells it obtained it, the sale shall be valid if it is found that he who sells it in this way obtained it for that amount. But where it is found that he received it as a gift, or obtained it by inheritance, or in any way whatsoever except by purchase, the sale in this case will be invalid.

LAW XI.

Of What Property a Sale Can Be Made.

Men can make a purchase or sale of property which does not exist and is not visible, as well as of that which is, and can be exhibited. This would be the case where one man sells to another the offspring of some slave or animal which is pregnant, or the crop of a vineyard or a tract of land, or something else of this kind; for although the property is not visible when it is sold, nevertheless the sale will be valid, since the property which is to yield the increase concerning which the sale is made, is indicated. But in case the property concerning which the sale was made does not yield any increase of itself, then the purchaser will not be bound to pay for it, except where he bought it at his own risk. Moreover, we decree that a man can purchase property which is not in any way certain, as would be the case where some one was fishing or hunting, and another should say to him; "I will give you such-and-such a price for the first thing you catch or kill;" if the other party assents, the sale will be valid, although he does not know what he is selling. We also decree that if the purchaser should say that he is willing to take the

¹ According to the Mohammedan Law, the price must always be specified, except where both the property and the money are at hand. "Where the article and the price are both produced, the sale is complete without any specifications of quantity or amount." Where this is not the case the sale is void. "A sale is valid either for ready money, or for a future payment, providing the period be fixed." The price must be stipulated at some known and determinate rate." (The Hedaya. XVI-1.)

The Twelve Tables did not permit the ownership to pass, even after delivery, until the price has been paid, pledges deposited, or an acceptable surety offered by the vendee. "*Ipsae res venditae, quamvis traditae fuerint, dominium nequitiam mutando, uti emptor eas pro suis habere possit, antequam venditori pretium soluerit, annumerato aere, aut fideiussores vel pignore dato, atque adeo illi eo nomine satisfecerit.*" (Leg. XII Tab. VI-III.)

The rule of the Civil Law is the same. "*Pretium autem constitui oportet, nam nulla emptio sine pretio esse potest. Sed et certum pretium esse debet.*" (Corp. Jur. Civ. Inst. III-XXIII-1.)

By the Roman law, absolute right to the property did not vest in the purchaser until after active or constructive delivery. The transaction was therefore merely an executory contract conveying a *jus ad rem*, the title remaining in the vendor until the article was delivered. This doctrine is not adhered to by the legal authorities of France, Spain, and Italy, who adopted the English and American view that the title to the article sold passes immediately to the purchaser without transference. "*La promesse de vente vaut vente, lorsqu'il y a consentement réciproque des deux parties sur la chose et sur le prix.*" (Cod. Civ. de Fr. III-VI-1, Art. 1589.) Both the Spanish and Italian Codes declare that the sale is complete and binding, on vendor as well as purchaser, when the article is accepted and the price agreed upon, without either delivery or payment. (Cod. Civ. de Esp. IV-VI-1, Art. 1450.)—Ed.

chance of the fisherman catching something first time, or of catching anything during a certain hour in the day, or during the day, then, although he may not catch anything, the purchaser is bound to pay him what he promised.¹

LAW XII.

A Sale Made of the Offspring of a Female Slave or of a Mare, or of Anything Else of This Kind, Is Valid.

Where a man fraudulently desires to sell another the offspring of a slave or a mare, or of some other animal, stating that she was pregnant but knowing that she was sterile, the sale is valid although it was made by fraud. The vendor is bound, however, to pay to the purchaser the estimated value of the offspring of said female slave or mare, and to make reparation to him for all damages he may have incurred on this account. We decree that the same rule shall apply where a party sells the yield of some vineyard, or that of certain trees, or of other property of this kind, knowing that it does not bear fruit, or by maliciously perpetrating some fraud by means of which it is prevented from bearing it, for he will be bound to pay the purchaser the estimated value of said fruit, as well as the amount of all damages which he suffered from not obtaining it.

LAW XIII.

A Man Can Sell the Right Which He Expects to Have in the Property of Another.

Men sometimes are in hopes of inheriting the property of others, and this expectation can exist in two ways. First, when someone is confident that he will inherit the property of a relative, he being so nearly related to him that he will be the heir of all his property, if he should happen to die intestate. And for the reason that there are some men who are willing to sell an expectation like this, or some right which they expect to have, we decree that they cannot do so if they mention the person from whom they expect to inherit; except where the said sale was made with the consent and approval of the parties themselves, and that they remain content with it until they die. Where they are not mentioned, the property can be sold in the following way, namely; by the party stating that he sells all profits and rights which may come to him from inheritance, no matter from what source they are derived. For this reason we forbid that a sale shall be valid where those from whom the parties expect to inherit are personally mentioned, lest the purchasers of the expectation or right aforesaid may have reason to exert themselves to compass the death of the parties whose property they are eager to inherit.

¹ The Civil Law authorized the sale of something not in *esse*, and whose future existence was based upon a contingency; *rei adquirendae incertae emptio*. This extended even to transactions classed as illegal by modern society, as the prospective winnings of a gambler. The offspring of a chattel of any description, or the future crop of a tract of land, could, in like manner, legally be made the subject of such a contract. The *spei emptio* is also recognized by our laws, where the vendor possesses a present vested right in the animal or the land which, under ordinary circumstances, may reasonably be presumed to yield an increase or product subject to sale.

Mohammedan law, on the other hand, declares such sales to be void. "The sale of a foetus in the womb, or of the offspring of that foetus is null."

"It is not lawful for a game-catcher to sell" (what he may catch at one pull of his net) "because the subject of the sale is uncertain; and also because the purchaser may be deceived." (The Hedaya. XVI-5.) The same rule applies to prospective crops of grain and fruits, the element of uncertainty which attaches to them vitiating such contracts, according to the opinion of the Prophet.--Ed.

LAW XIV.

When a Sale Made of a Mill, a House, or Any Other Edifice Which Has Been Demolished, or of Trees Which Have Been Torn Up by the Roots, Is Valid, and When It Is Not.

Where a man sells another a house, a mill or any other building whatsoever, and the said building has been demolished, or burned, or destroyed in any other way, and the purchaser is ignorant of the fact, the sale will not be valid, except where the party who sold it thought that it was in good condition when he disposed of it, and did not know that it had been burned or demolished. We decree that the same rule shall apply where a party in this manner sells trees situated in some other place, for the sale will not be valid if the trees have been cut down, or burned, or torn up by the roots at the time they were sold. We decree that the same rule shall apply where the greater portion of the property, sold in this way, has been burned or demolished, but where the smaller part of the same has been consumed or destroyed the sale will be valid; as much should be deducted from the price, however, as it is thought the property is diminished in value by reason of a portion having been burned or demolished at the time the sale was made. If, however, one man knowingly sells another property which was burned or demolished at the time, the vendor stating that it was in good condition, the sale will not be valid, because property which is not in existence cannot be sold. The party who sold it in this way is bound to pay to the purchaser all damages which he may suffer on this account, by reason of the fraud which he knowingly committed by selling what he knew did not exist. Where the property knowingly sold in this way was only partially and not totally burned or destroyed, the sale in that case will be valid, but the vendor will be bound to pay to the purchaser all loss and damages which he may incur on this account, and in regard to this he should be believed on his oath, and the amount should be estimated by the judge. Moreover, we decree that where one man sells another property which has been partially and not totally burned or destroyed, and the purchaser knew that this was the fact, and the vendor was ignorant of it, in this case the purchaser will be bound to pay the full price. Where the party who sold the property which was burned or demolished sold it for what it was, informing the purchaser of the facts, in this case the sale will be valid.¹

LAW XV.

Neither a Freeman, Nor Any Sacred or Holy Property, Nor Any Public Place Can Be Sold.

No freeman, nor any sacred, religious, or holy property, as, for instance, market-places, roads, commons, rivers and springs belonging to the king, or to any Council can be sold or disposed of. Yet although we stated above that sacred, religious, or holy property cannot be sold, there are circumstances under which a sale of it can be made. This would be the case where a small village or hamlet is sold with all its appurtenances, for although a church

¹The doctrine set forth in the Codes of the Latin races differs in some respects from that of the *Partidas*. Where a portion of the property has been destroyed, the contract of sale is voidable at the option of the purchaser, but where none of it was in existence when sold the sale is absolutely void, regardless of the good faith of the vendor. "*La vendita è nulla, se al tempo del contratto era interamente perita la cosa venduta. Se ne fosse perita soltanto una parte, il compratore ha la scelta o di recedere dal contratto, o di domandare la parte rimasta, facendone determinare il prezzo mediante stima proporzionale.*" (Cod. Civ. d' It. III-VI-3-Art. 1461.) The language of the French and Spanish Codes is identical with the above. (Cod. Civ. de Fr. III-VI-3-Art. 1601.) (Cod. Civ. de Esp. IV-IV-3-Art 1460.) By both the English and American law a contract entered into for the sale of property not in existence is not binding upon either vendor or vendee. (Story on Sales, V-184; Hilliard on Sales, XX-19.)—Ed.

might be situated in said village, nothing belonging to it can be sold separately by itself, but it all passes with the other property, and the sale will be valid, as stated in the First Partida of this our book, in the Title which treats of the property of the church and designates which can be alienated and which cannot.

LAW XVI.

A Piece of Marble, a Pillar, a Stone, or Anything Else of This Kind Attached to a House, Cannot Be Removed to Be Sold.

Marble or any other kind of stone, wood, or anything else whatsoever, which is attached to a house either for its advantage or its embellishment, cannot be removed to be sold, and if anyone should remove it, the sale will not be valid. Where, however, anyone violates this law by selling materials of this kind, and the property sold passes under control of the purchaser it should remain in his possession, but the latter is bound to pay the price for which he bought it, into the Court of the King, along with an equal amount of his own money. If the purchaser has already paid the price it should be returned to him, and the party who sold said property should also pay as much of his own money as the price for which he sold the property amounted to. Moreover, we decree that no man can sell his fugitive slave so long as he remains a fugitive.

LAW XVII.

No Man Has a Right to Sell Poisons or Herbs by Means of Which Others Can Be Killed.

No man should sell or purchase poison, herbs, or any other dangerous substance, by means of which one man can kill another by administering them to him in his food or drink. There are, however, certain drugs which are in the nature of poison, that can be sold and purchased, as, for instance, scammony, and other remedies of this kind; for although they are of this nature men use them for medicines, because any bad quality they may have can be neutralized by mixing them with other substances.

LAW XVIII.

A Purchase Made by a Man of His Own Property Is Not Valid.

No man can purchase what belongs to himself, and if he should happen to do this without knowing it, he can recover what he paid for said property. This is understood to refer to cases where the property is absolutely his own; where, however, someone else has a share in it, the sale will be valid so far as it relates to that which belongs to the other party, and not to that which belongs to himself. If, however, a man has under his control, or in his possession, property belonging to someone else, the party entitled to the ownership and to whom the said property belongs, can purchase the right which the other has in it, and a sale of this kind will be valid. We decree that the same rule shall apply where a man who is in possession of property buys from another some right or easement, which he had in said property in his possession, and a sale of this kind will be valid.

LAW XIX.**How Property Belonging to Someone Else Can Be Sold.**

Where one man sells another property belonging to someone else, the sale will be valid. But the party who made the purchase, either knew that the said property which he purchased did not belong to him who sold it, or believed that it was his. If he knew that it belonged to someone else, although he may subsequently return it to the owner in court, the vendor is not bound to return him the price; except if when he sold it to him he bound himself to do so if the owner should sue for said property and recover it. However, where the purchaser did not know that the property belonged to a third party when he bought it, in this case the vendor will be bound not only to refund him the price, but also make good all damages and losses which he may suffer by reason of the sale he made to him.¹

LAW XX.**A Sale Is Not Valid When the Parties Disagree As to the Price, or As to the Property Which Is the Subject of the Sale.**

Both purchaser and vendor should agree upon the price, for if they do not and the vendor says that the price is greater than the purchaser agreed to give, the sale will not be valid. This would be the case where the vendor states that he sold the property for a hundred maravedis, and the purchaser says that he did not agree to pay more than fifty, and the truth of the matter cannot be ascertained. But if they disagree, the vendor saying that the price is less than what the purchaser states it was, then the sale will be valid.

We also decree that if the parties disagree with respect to the property which is the subject of the sale, the latter will not be valid. This would be the case where the vendor says that he sold a vineyard or a tract of land situated in a certain locality, and designating the same, and the purchaser declares that he did not understand this to be the property, but some other which he described as being in some other locality; or where he says that he sold him a slave, mentioning him by name, and the purchaser replies that he did not understand it to be that slave but another of another name.

LAW XXI.**A Sale Made Fraudulently, Where One Article Is Sold for Another, Is Not Valid.**

Where one man sells another brass for gold, or tin for silver, or any metal whatsoever instead of another, a sale of this kind will not be valid. Moreover, we decree that where one man sells another a slave, who is found to be a woman when the purchaser thought that he was buying a man, a sale of this kind will be void, although the party who sold said slave did not know that

¹ The civil law permitted the sale of property belonging to another, subject to the proof of his title to the same by the owner. This rule was also recognized by the common law, but only so far as sales made in market overt were concerned; for, in a private transaction no man could, under any circumstances, alienate something to which he had no right. Such a sale to be valid must have been attended with every circumstance of publicity, and the innocence of the purchaser established, otherwise the existence of *mala fides* was presumed if the sale was subsequently called in question.

According to the Twelve Tables and the civil law, an indefeasible title to the property was obtained by a *bona fide* purchaser after a year had elapsed; a doctrine whose correctness was not admitted by the common law, which declared that the method by which the property was transferred was the essential point which determined the future rights of the vendee, and not the period of time during which he had held undisputed possession of the same.

The French and the Italian laws agree with the English and American so far as the sale of property belonging to another is concerned. "*La vente de la chose d'autrui est nulle.*" (Cod. Civ. de Fr. III-VI-3-Art. 1599.) (Cod. Civ. d' It. III-VI-3-Art. 1459.)—Ed.

she was a woman. The same rules applies and the sale will not be valid, where a man knowingly sells a woman as a virgin who is not such, but where a sale of this kind is made and the party thinks that the woman is a virgin, it will be valid, even if she were not so. We also decree that where a man has two slaves, one of whom has one trade and the other another, and he sells one of them, mentioning him by name and stating the trade of the other, and the master knew the names of both of them; the slave whom he mentioned by name shall be the one who is sold, although he was mistaken in his trade. If, however, he did not know their names, then the one will be sold whose trade he mentioned, although he made a mistake in his name.

LAW XXII.

Neither Weapons of Wood or Iron Should Be Sold to the Enemies of the Faith.

Christians should neither sell nor lend weapons made of wood or iron to the Moors or any other enemies of the faith. Moreover, we forbid any persons in our dominions to remove to the country of said enemies, so long as they are at war with us, either wheat, barley, rye, oil, or any other article of food, by means of which they can sustain themselves, or sell or give them to them in Our dominions to be taken to their country. However, we deem it proper that those who come to our court upon a mission, or under any agreement, should be sold such provisions as they need to eat and drink, so long as they remain there. We order that anyone who violates this law shall for that reason forfeit all his property, and that his life shall be at the mercy of the king; for to furnish arms or other assistance to the enemies of the faith, by means of which they can maintain themselves, is a species of treason.

LAW XXIII.

Who Is Entitled to the Profit or Must Bear the Loss of Property That Is Sold, When It Is Increased or Diminished in Value.

A sale is effected in two ways, as we stated in the beginning of this Title, one in writing and the other without it, and when it is made without any written instrument, and the purchaser agrees with the vendor, one as to the property and the other as to the price, from that time forward any injury which may result to the property will be at the risk of the purchaser. We decree that the same rule shall apply where the sale is made by means of a written instrument, for as soon as the bill of sale is signed and witnessed, from that time forward all damage will be at the risk of the purchaser, although the property may not, as yet, have passed into his possession. This is the case where anyone purchases a slave or any other kind of property, and after the sale has been closed, said slave becomes ill and loses a limb, or dies, without the vendor's fault; or where he has purchased some other property and it is consumed by fire; or is entirely or partly demolished; or is depreciated in value in some other way, without the fault of the vendor. In these instances and others of the same kind, all damage resulting to the property purchased will be solely at the risk of the purchaser.

We also decree that where a sale is effected in any of the ways above-mentioned, any profit subsequently derived from the purchased property shall belong to the purchaser, although the property may not, as yet, have passed into his possession. This will be the case where anyone buys a field or a vineyard, and after the sale had been made, the property is increased in value by an inundation, through the addition of land on which were situated trees, or something else by means of which its value was enhanced; and also

where the property was worth a hundred maravedis when the sale was made and afterwards through change in the condition of the weather, it becomes worth two hundred maravedis or more; although the property was increased in value in the ways aforesaid or in others similar to them, all said increase shall belong to the purchaser. For it is but just that since he must suffer the injury, as we have stated, where the property is lost or depreciated in value, so any advantage proceeding from it shall belong to him.

LAW XXIV.

Who Is Entitled to the Profit and Must Bear the Loss Resulting From Property Which It Is Accustomed to Count, Weigh, Measure or Taste, After It Has Been Sold.

We have stated that any damage which happens to property after the sale of it is concluded, must be borne by the purchaser, although the property which he bought may not, as yet, have come into his possession. There is, however, property to which this rule does not apply, for where anyone buys wine, ginger, cinnamon, or any other article of this kind, which men are accustomed to taste before they purchase them, and where such articles that are sold by weight, or by measure, are destroyed or deteriorated, before they are tasted, weighed, or measured; in this case the risk will be the vendor's and not the purchaser's, although both of them may have agreed upon the price. But where they are destroyed or deteriorated, after they have been tasted, weighed, or measured, any subsequent risk will belong to the purchaser and not to the vendor. However, where the purchaser and the vendor agree upon the price and appoint a day on which the purchaser is to taste the article, or upon which it is to be weighed or measured, and the purchaser does not come upon the day appointed, and the property is afterwards destroyed or deteriorated, it will be at the purchaser's risk. If, however, it should happen that the vendor and purchaser having agreed upon the price, did not appoint a certain day upon which the purchaser should taste the article, or upon which it should be weighed or measured, as we have stated, the vendor can then notify the purchaser in the presence of witnesses, to come and taste, weigh, or measure the property which he sold him; and if he is unwilling to do so, and from that time forward the property is destroyed or deteriorates in value, it will be at the risk of the purchaser. We also decree that the vendor, after he has served this notice, can sell the property to another party if he desires to do so, and if anything is lost by the sale the purchaser is bound to make good any diminution in value on this account.

Moreover, we decree that the vendor can do still more, for if he has need of the vessels containing the wine, or other property which he sold, he can hire others at the cost and expense of the purchaser; and if he cannot find any vessels to hire, and those which he sold were of such a description that they could be used to collect other articles of the same kind, and he has nothing to put them in; as, for instance, where this is wine or something of that description, he can then throw into the street, or the public highway, whatever he sold in this way, weighing or measuring it, in the first place, before emptying it out. The vendor can do this any time after the day appointed for the purchaser to come and measure or weigh the property aforesaid when he was notified to come and take it, as above stated. What we say in this law applies to all articles which a man is accustomed to taste, measure, or weigh. But where the article sold is of gold, silver, or is wheat, or anything else which it is accustomed to sell by weight or measure only; we decree in this case where said property is sold at a loss, any or all of it being

destroyed before it is weighed or measured, it shall be at the vendor's risk. However, where other property of this kind is repaired or enhanced in value in that locality, any increase or diminution in value which happened on this account will only concern the purchaser.

LAW XXV.

Who Is Entitled to the Profit, or Must Bear the Loss of Articles Which Are Accustomed to Be Counted, Weighed or Measured, When They Are Sold in Bulk, and Decrease or Increase in Value.

It happens at times that some articles which can be weighed or measured are sold by men in bulk, without weighing or measuring them; as, for instance, where one man sells another the wine in a certain cellar, or the oil in a certain warehouse, or the grapes of some vineyard, or something of this kind. Wherefore, we declare that after the purchaser and the vendor have agreed upon the price of any of the articles aforesaid, or of any similar to them, the sale having been made at sight, if the property sold in this way should afterwards be lost, diminished, or increased in value, said profit or loss shall affect the purchaser alone.

LAW XXVI.

Who Is Affected by the Profit and Loss of Property Sold Under a Condition, Where It Is Increased or Diminished in Value.

When a sale is dependent upon a condition, and the property sold in this way is diminished or increased in value before the condition has been complied with, any loss resulting from said deterioration, or any profit derived from said property belongs to the purchaser. But where said property is lost or entirely destroyed in any way whatsoever, the vendor must bear the loss, although the condition may be complied with afterwards. Moreover, we decree that where parties make a sale under a condition, and, before the condition has been complied with, both purchaser and vendor, or either of them, die, and after their death the said condition is complied with, the sale will be valid, and the heirs of said parties will be bound to ratify it.

LAW XXVII.

Who Must Bear the Loss of the Property Sold When It Becomes Deteriorated Through Delay in Its Delivery by the Vendor.

Where a vendor delays delivery of the property which he sold to a purchaser after they have agreed upon the price, and the purchaser notifies him in the presence of witnesses to deliver him what he purchased of him, and to accept its price, inviting him to do so and showing it to him; and the vendor then is unwilling to deliver said property, and, after this, it is destroyed or diminished in value, the vendor will be responsible, because it is his fault on account of the delay. But if the vendor should subsequently desire to deliver the property to the purchaser before it is destroyed or has deteriorated, and the purchaser should be guilty of delay and be unwilling to accept it, and after this the said property should be destroyed or be diminished in value; the purchaser in this case will be responsible, because the last delay happened through his fault.

LAW XXVIII.

**What Things Those Persons Who Sell and Purchase Should Do, and
What Agreements They Should Observe.**

The purchaser should pay the vendor the price which he promised, and the party who made the sale should deliver to the other, along with the property which he sold him, everything belonging to, or connected with it. Wherefore, we decree that where one man sells another a house, it is not understood that he sells him a house alone, but also the wells, the pipes, the gutters, the aqueducts, and everything else which it is customary to use for said house, whether they are inside or outside. We also decree that the brick, stone, tiles, and lumber which were brought to or placed in the house which was sold, if they belong to said house cannot be removed by the vendor. If, however, the vendor had purchased lime, brick, tile, or lumber, or any other material of this kind, or had borrowed it, or it had been given to him, although he may have brought it there with the intention of using it on work on said house, nevertheless said vendor has the right to remove what he has brought in this way, and did not use in said work.

LAW XXIX.

**Bins and Subterranean Jars Situated in a House Which Is Sold Should
Belong to the Purchaser.**

A granary built of lumber and attached to a house which was sold, or which was too large to be moved; or any earthen jars for oil which are also attached to the premises, or sunk in the ground, or other things of this kind cannot be removed by the vendor, for it is understood that they belong to the house, and for that reason should become the property of the purchaser. But all other movable property which is not fastened to the house, and does not belong to it are the property of the vendor, and he has the right to remove them, and do with them whatever he wishes, as, for instance, cupboards, casks, and jars which are not sunk in the ground, and other articles of this description.¹

¹ By the rule of the civil law the contract of sale being complete without delivery of the subject of the same, the purchaser was entitled to all the profits which accrued from its use or enjoyment, and any loss or damage to the said property was declared to be at his risk. "*Periculum rei venditae statim ad emptorem pertinet, tametsi adhuc ea res emptori tradita non sit.*" (Corp. Jur. Civ. Inst. III-XXIII-3.)

The Gentoo Code contains similar provisions as to both real and personal property. "If a Person had sold any commodity to another, and the purchaser does not make demand for the goods purchased, which goods are afterwards damaged by the vender's fault, the vender shall make good the losses; but if the damage arises from any calamity of the season, or from any innovation of the Magistrate, the vender shall not make good the loss." The profits obtained from all real-estate and chattels belonged to the vendee from the time he entered upon the premises, or the vendor neglected or refused to deliver the article sold. (Gentoo Cod. XI-1.)

The Spanish law declares that the obligation for delivery is extinguished when the subject of sale is destroyed without the fault of the vendor, and the *onus probandi* lies upon the latter to show that this is the case. The liability of the purchaser with reference to the loss or deterioration of ordinary merchandise does not attach until it has been weighed, counted, or measured. "*Si las cosas fungibles se vendieren por un precio fijado con relación al peso, número, o medida, no se imputará el riesgo al comprador hasta que se hayan pesado, contado o medido, a no ser que éste se haya constituido en mora.*" (Cod. Civ. de Esp. IV-IV-1, Art. 1452.) The Italian Code agrees with the principle laid down in the text, and places the responsibility for injury upon the purchaser. "*La cosa rimane a rischio e pericolo dell' acquirente, quantunque non ne sia seguita la tradizione.*" (Cod. Civ. d' It. III-IV-3-Art. 1125.) The law of France gives the profits to the vendee from the date of the contract. "*La chose doit être délivrée en l'état où elle se trouve au moment de la vente. Depuis ce jour, tous les fruits appartiennent à l'acquéreur.*" (Cod. Civ. de Fr. III-VI-4, Art. 1614.) If the subject of the sale has become deteriorated without the fault of the vendor, the vendee can either rescind the contract, or demand the article without diminution of the price. (Art. 1182.)

The common law required the vendor to perform all the specified acts for which he was bound by his agreement, and if he failed to do so, the articles sold, although already weighed, numbered, measured, and set aside for the purchaser, were at his risk, even if they had not been paid for; but in caring for them he was only obliged to exercise ordinary diligence, or that of "a good head of a family," as set forth in the Codes of Latin races. Everything appurtenant to, or necessary for the enjoyment of real and personal property passes, of course, with its transfer or delivery, unless made the subject of special exception in the conveyance or bill of sale.—Ed.

LAW XXX.**Fish Reared in Ponds Belong to Houses Which Are Sold, and Other Animals Reared on the Premises Should Belong to the Vendor.**

Where there is a spring or pond in the house or on the property which was sold, any fish which have been reared and are found there at the time the house is sold, should belong to the vendor, just as chickens and other fowls which are brought up in the house. We decree that the same rule shall apply to the animals which men are accustomed to rear at home, and what we have stated in the preceding laws concerning a residence, applies also to a castle or farmhouse, or any other dwelling whatsoever which is sold.

LAW XXXI.**Wine Presses and Oil-Mills, or Cellars With Their Jars, Which Are Situated in a Field, or a Vineyard, or an Olive Plantation Which Is Sold, Do Not Belong to the Purchaser Unless They Are Especially Mentioned in the Bill of Sale.**

Where one man sells another an olive plantation, a field, a vineyard, or an orchard, in which there is a wine-press or an oil-mill, or any other separate structure which is used as a warehouse or a wine cellar, and which contains jars for holding wine, it is understood that none of the things aforesaid are included in the purchase, except where it is stated that they are comprised in the sale, or where said structures were designedly placed for the purpose of collecting and preparing the fruit of said house or land which is sold.

We also decree that where one man sells another a vineyard, or a place containing vines which is in need of stakes to support said vines, it is not understood that they are included in the purchase, even though the vendor has already cut them, or bought them, if he had not put them in place; but where he has once arranged them, although he may have removed them afterwards, with the intention of replacing them at some other time, in this case they will belong to the purchaser.

LAW XXXII.**The Vendor Is Bound to Make Good to the Purchaser the Title of the Property Which He Sells Him.**

The property sold should be delivered to the purchaser absolutely free of all encumbrance, so that if any other party attempts to interfere with his possession of it, or bring suit for the same, the vendor may be obliged to make the title to said property good. However, as soon as a suit of this kind is begun, the purchaser is bound to notify the party who sold him the property of the fact, or to do so at least before the witnesses are called, who have been summoned to testify concerning said property against said purchaser in court. And if the latter should not thus notify the vendor, and he afterwards loses his case in court, he cannot claim the price from the party who sold him the property, or from his heirs. But where he did notify him, and the vendor was unwilling to protect the purchaser, or was unable to make a valid defense, the vendor is then lawfully bound to return him the price which he received from him for the property sold, with all damages and losses which he suffered on this account. And if, at the time when he sold him said property, he bound himself in a penalty of double the amount if he did not protect the purchaser according to law, it is not understood that he should pay merely double the price, but double the value of the property, although it may amount to more.

LAW XXXIII.**Where Property Belonging to Another Person Is Sold, Its Owner Can Claim It From the Party in Whose Possession He Finds It.**

Where one man sells another property belonging to a third party, the owner can claim it of the purchaser in whose possession he finds it. But if the purchaser tells the party who sold it to him to come and defend said property which is sold in court, and to answer the party who brings suit for it, and the vendor is willing to come into court with the plaintiff in order to protect said property, binding himself to do justice with regard to it, just as if it was still in his possession, the plaintiff has then no reason to sue the purchaser, but we decree that he must sue the party who sold the property, and let him who bought it rest in peace. Where, however, the vendor is unwilling to come into court with the plaintiff, the latter can then bring suit against the purchaser, but the right of the latter to cause the vendor to make good in court the title to the property which he sold him shall remain unimpaired.

LAW XXXIV.**Where a Party Appointed the Heir of Another Sells the Right Which He Has in the Inheritance, How He Should Make This Good.**

Where anyone has been appointed an heir, and sells another all the rights which he has in the personal and real estate of the party who appointed him his heir, although the purchaser may happen subsequently to lose some particular part of said personal property by a decree of court, nevertheless, a vendor of this kind is not bound to make good the title to the said property which was lost. But where all the real estate is lost in this way, the vendor will be required to make good the title, or to repay the price which he received for it together with all damages and losses.

We decree that the same rule shall apply where a man purchases all the revenue from a certain city, or of some estate, although he may lose some certain portion of said revenue by a decree of court, the vendor will not be bound to make good, or deduct it. If, however, all the revenue, or the greater portion of it, should be lost in this way, the vendor will then be bound to make good, or to return him the price paid, along with all damages and losses arising from the transaction.

LAW XXXV.**How a Person Who Sells a Ship, a House, or a Shepherd's Hut Should Make the Title to It Good.**

Where one man sells another a ship, a house, a shepherd's hut, or any other property of this kind, with all of its appurtenances, and the purchaser loses any portion of said property by a decree of court, the vendor is bound to make good to the purchaser, just as if he had lost the entire property which was the subject of the sale.

LAW XXXVI.**For What Reasons a Vendor Is Not Bound to Make the Title of Property Good to a Purchaser.**

A vendor, as we stated above, is bound to make good the title of the property which he sells to a purchaser, or to return him the price paid with all the damages and losses arising therefrom, if he did not defend said title.

There, however, are cases to which this rule does not apply. The first is, where the purchaser notified him so late that the testimony of the witnesses summoned in the suit to recover said property has been begun in court. Second, where the property had been placed in the hands of arbitrators without the knowledge or consent of the party who sold it, and the arbitrators decide against him. Third, where the party, through his own fault, lost possession of the property sold him. Fourth, where he left the property, as it were abandoned, and loses it. Fifth, where the property sold is a female slave, and the party who purchased her placed her in a brothel. For a reason of this kind the slave can declare that she should be free, and if she is set at liberty the vendor is not bound to make good the title to her, or return the price paid him.

Moreover, we declare that where the purchaser proves disobedient, and refuses to appear and hear the decree when judgment is to be rendered against him for the property he purchased, and, on account of said disobedience, loses said property; the vendor will not be bound to make good the title to the same, or to return him the price which he paid. Sixth, where the purchaser held said property for so long a time, when suit was brought against him for it, that he could lawfully protect it by a defense of this kind if he should take advantage of it, and he did not. Seventh, where a decision was rendered with regard to the property purchased, in the absence of the vendor, and when said decision was rendered the purchaser did not take an appeal.

We also decree that where a man plays backgammon, or throws dice, and while in the game he either sells some property, or loses it by gambling, and after this the purchaser loses said property in court, or the party who had won it does so; the vendor will not be obliged to defend the title to said property, or to return the price paid for the same. This rule also applies where the purchaser consents that some sacred object be made out of what he purchased, he being content and not opposing it. We also decree that where a judge knowingly gives a wrongful decision, against a purchaser with regard to property which he has bought, said judge must make the same good and pay it out of his own money, for the reason that he ordered it to be wrongfully taken, and the vendor is not liable because he was not bound to protect the property except in accordance with justice.

LAW XXXVII.

Where a King Deprives the Purchaser of Lands, the Vendor Is Not Bound to Make Good the Title to the Same.

Where one man sells another a farmhouse or any other real estate, and, after it has been delivered to the purchaser, the king deprives the purchaser of what has been delivered to him, the vendor will not be afterwards bound to make good the title to the same. This is understood to apply to a case where the vendor has a sealed letter from the king by which he grants him permission to sell and dispose of said property, for where he has no such letter he is bound to make the title to it good. We decree that the same rule shall apply where the vendor has a letter from the assessors of the king, which states that said property is given to him with the right of perpetual inheritance, or in partition, or in exchange for some other real estate which he had taken from him. For, whenever the king deprives the purchaser of what has been delivered to him, the vendor will not be afterwards bound to make good the title to the same.

LAW XXXVIII.

What Agreements or Contracts Made Between Vendor and Purchaser Are Valid.

When a vendor enters into an agreement or contract with the party who purchased his property from him, if said contract or agreement is not contrary to the laws of this our book, or opposed to good customs, it should be observed. We also decree that, where the vendor and purchaser enter into a contract by which the purchaser is to pay the price upon a certain day, and if he does not pay it on said day the sale for this reason may be set aside; a contract of this kind shall be valid, and the purchaser is entitled to the earnest money or whatever part of the price was paid to him, and if at this time the entire payment or greater portion of it was not made the sale shall be set aside. Nevertheless, the vendor has the choice of demanding the entire price, and of making the sale valid, or of abrogating it, retaining for himself the earnest money or a part of the price, as aforesaid. And after he has decided to do one of the things above mentioned, he cannot afterwards change his mind, so that he can leave one and turn to the other.

Moreover, we decree that where the purchaser has received any income from the property which he bought in this way, he must return said income to the vendor, except where the party who sold the property is unwilling to return the earnest money, or the portion of the price which he has received, for in this case he will not be entitled to said income. If, however, the vendor desires to have the income, he is bound to pay the purchaser the expenses which he incurred in collecting the same. We also decree that where the sale is not set aside, and the property becomes deteriorated through the fault of the purchaser, while it was in his possession, he is bound to make good to the vendor the amount of deterioration.

LAW XXXIX.

Concerning an Agreement Made by the Vendor With the Purchaser, as to Who Shall Be Responsible for Any Damage to the Property Before It Is Delivered.

When the vendor makes an agreement with the purchaser that if the property which he sells him is deteriorated or destroyed before it is delivered to him, said loss or deterioration shall be borne by the vendor, we decree in this case that the party who makes the sale shall bear the loss. The same rule applies where the property sold consists of wine, and the vendor says to the purchaser, that it is from such-and-such a place or of such-and-such a kind, that it can be kept, and will not spoil in a very long time. For if it should spoil or deteriorate, he, and not the purchaser, will bear the loss. Moreover, we decree that the same rule shall apply when the vendor knew that the wine was liable to be spoiled, and kept silent.¹

¹ The tacit implication of warranty in all sales of personal property under the civil law, is a principle at variance with that of the common law, by which, when fraud does not exist, the maxim "*caveat emptor*," always applies. Under the former, to avoid the obligation of warranty, it was necessary to make an express stipulation to that effect or the vendor could be held liable for an imperfect title, or for any blemish which rendered the subject of sale unfit for the purpose for which it was purchased. When such a defect existed, the sale could be rescinded by an *actio redhibitionis*. (Corp. Jur. Civ. Dig. XIX.1-9-39.)

An implied warranty also exists under the Mohammedan law. "One requisite, in an unconditional contract of sale, is that the subject of it be free from defect." (The Hedaya XVI-IV.) If the article is subsequently ascertained to have been defective when sold, the purchaser can retain it at the full price, or return it. He can not keep it and demand compensation, because the vendor will be injured thereby.

In accordance with the Roman doctrine, contracts of sale under the French, Spanish, and Italian laws always contain an implication of warranty by the vendor, and, even where this is abrogated by express agreement, the latter will still be liable if the vendee was not aware, at the time of the sale, that he was in danger of being deprived of the property, or that he purchased it at his own peril and risk. Under these circumstances the vendor is obliged to refund the purchase money along with damages. (Cod. Civ.

LAW XL.

Concerning the Agreement Made by a Vendor with Regard to Property Sold Under a Condition.

Men in sales make use of another kind of contract, as, for instance, where the vendor says: "I sell you my vineyard for such-and-such a price, with the understanding that if I find anyone who will give me more for it, before a certain day, he can have it." We decree that where a sale is made in this way, and before said day the vendor finds someone who will pay him a larger price for the vineyard, or he offers him a better bargain than the other promised to give him in making the purchase, he should inform the first purchaser how much larger amount the other party promised to give him. And if he agrees to pay this, he should receive it from him and let him have the vineyard, provided he gives him the price aforesaid, in addition to the increased amount. When the first purchaser is not willing to do this the sale shall not be valid, and he is bound to return the vendor the vineyard, along with any of the crop which he received from it, first deducting the expenses which he incurred by gathering the same. But where the party who raised the price, as aforesaid, is a son or a slave of the person who sold the property, or anyone else who acted fraudulently by his advice, the purchaser is not then bound to return said property, or to keep the agreement.

LAW XLI.

Concerning An Agreement Made with Respect to Property Pledged as Security, that Where It Was Not Released Upon a Certain Day the Property Should Be Purchased by the Party Holding It As Security, and Whether Such An Agreement Is Valid or Not.

Where one man deposits property with another as security, with the understanding that if it is not redeemed by a certain day it may be considered as purchased by him who accepted it as security, he giving or paying above the amount which he paid when he took it as security as much as the property may be considered to be worth, according to the judgment of reliable men, a contract of this kind will be valid. But where it is purchased in some other manner, the party stating that he had made the contract with him that if said property was not redeemed upon a certain day, it should belong to him in con-

do Fr. III-VI-3 Art. 1626-1629.) Cod. Civ. de Esp. IV-IV-3. Art. 1475-1478.) (Cod. Civ. de It. III-VI-1 Art. 1482-1486.)

The Gentoo Code not only required restitution in double the amount of the purchase money, but also imposed a fine. Warranty here was also implied. "If a person producing to another a commodity without blemish, and, having stipulated for a price according to the value of such commodity, afterwards giving to the purchaser damaged goods, in that case the magistrate shall cause the vendor to give double of such price to the purchaser, and himself also shall take from the vendor double of such price as a fine." (Gentoo Cod. XI-1.)

The English and American rule, with reference to the warranty of property sold, as is well known, places the risk upon the vendee, except where a guarantee, either general or restricted, is given by the vendor in person, or by some one acting for him, or where it is made in his presence without his dissent. No vendor is liable for palpable defects, or where it can be established that the purchaser was aware of their existence, even though they were not apparent; nor does liability attach to a vendor where he makes a warranty subject to the sale. A special warranty as to some certain point or characteristic, is considered to be susceptible of only strict and literal construction, and, in no way, to apply to others not mentioned; "*Expressio unius personae vel rei, est exclusio alterius.*" The ancient rule of the common law, evidently derived from Roman sources, that a warranty was necessarily implied by the payment of a valuable consideration or price, and which was abandoned by the English courts more than a century and a half ago, was adopted in Louisiana. "Although at the time of the sale no stipulations have been made respecting the warranty, the seller is obliged, of course, to warrant the buyer against the eviction suffered by him of the totality or part of the thing sold, and against the charges claimed on that object, which were not declared at the time of sale." (Civ. Cod. of La. VII-VI-2. Art. 2477.)

In certain cases, under our laws, this doctrine applies in other States, and an implied warranty is presumed to exist, so far as the title is concerned; as where a fair price is paid for an article in the possession of the vendor, and openly claimed by him as his own. The vendee is required to exercise ordinary care in examination of the subject of sale, which it is obviously his interest to do, and for neglect of which, where blemishes can readily be detected, he cannot hold the vendor responsible. Depreciation in value due to hidden defects must be borne by the purchaser. (Story on Sales XII-348-386; Hilliard on Sales XVIII, pp. 244-297.)—Ed.

sideration of what he had paid on it as security; in this case neither the contract nor the sale shall be valid. We do not consider it proper that contracts of this kind should be valid, for the following reason, namely; because those who lend money to others on pledges are not willing to do so in any other way, and when men are in great distress, on account of their extreme necessity, they will enter into a contract of this kind although they are aware that it will be to their injury.

LAW XLII.

Concerning Those Who Sell Property to Others for a Fixed Sum, Under the Condition that the Vendor, or His Heir, Can Recover Said Property by Refunding the Price.

Where one man sells another property for a certain sum, and the contract is made between them, at the time of the sale, that whenever the vendor or his heirs refund the price of said property to the purchaser or his heirs, they should be bound to return the property sold in this manner; we decree that where a contract of this kind was made at the time of the sale it shall be observed, and if the purchaser or his heirs are unwilling to keep said contract or agreement, or return said property, as aforesaid, if a penalty was inserted in the contract they must pay it. Where the vendor or his heirs are unwilling to receive the penalty, they should surrender the property sold, except where the agreement was that it should be returned and the penalty paid. If no penalty was inserted in the contract, the purchaser is absolutely bound to return the property if it is in his possession, and if it is not, he should reimburse the vendor for all damages and losses which he suffered for the reason that said property sold in this way was not returned.

LAW XLIII.

Where a Vendor Agrees with a Purchaser Not to Sell Property to Certain Men or Deposit It as Security with Them, Such an Agreement Should Be Observed.

Where one man sells to another a castle, tower, house, or any other property whatsoever, with the understanding that neither the purchaser nor his heirs can ever sell or alienate it to certain men who are designated by name, and if they should violate this agreement that the ownership of the property shall revert to the vendor or his heirs; we decree that a contract of this kind shall not be valid. Wherefore, although the purchaser or his heirs may violate said contract, neither the vendor nor his heirs, can, for this reason, claim the property from the party to whom it was subsequently transferred. Where, however, a penalty was inserted in said contract, the party who made it will be bound to pay it, as well as all damages and losses which may arise on this account. Said damages and losses should be appraised by the party under oath, with the approval of the judge.

LAW XLIV.

Concerning Those Who Forbid by Will that a Castle, Tower, House, Vineyard, or Anything Else Belonging to Their Real Estate Be Sold.

Where a man forbids by will, that a castle, tower, house, vineyard, or anything else belonging to his real estate be sold or transferred, giving some suitable reason for doing so, as, for instance, if he should say: "I desire that such-and-such property (mentioning it specifically) be not sold under any circumstances, but forever remain in possession of my son or my heir, in order that he may be always more honorable and better thought of;" or if he should

say that it must not be alienated until the heir becomes of age; or until he returns, if he has gone somewhere else; for any of these reasons or for any other which is proper and like them, said property cannot be disposed of.¹ But where the party says simply that it must not be sold and gives no suitable reason why, not designating any person or cause on account of which he does this, and the property should be sold, the sale will be valid even though he forbade it.

LAW XLV.

Concerning Those Who Give or Sell Slaves to Others Under the Condition that They Be Emancipated Within a Certain Time.

When one man gives or sells a slave to another, under an agreement that he will be emancipated by a certain day, or that he will be absolutely emancipated, we decree that although the party who receives said slave under an agreement of this kind may not liberate him on that day or even afterwards, said slave shall be emancipated after said day. But where he says that he sells or gives said slave, with the understanding that the party to whom he gives or sells him will emancipate him whenever he desires to do so; in a case of this kind the slave will be free as soon as the party who received him under such a condition dies, for after a man is dead he has no will to do, or not to do anything. And if he should say that he gives or sells said slave to him with the understanding that he will emancipate him as soon as he can do so, the slave being present, and the party who receives him does not emancipate him within two months; the said slave shall be free at the expiration of said time by reason of an understanding of this kind. Where said slave did not happen to be present at the time when he accepted him under said condition, and he does not emancipate him by an instrument in writing, or orally, within four months, said slave shall, from that time, be free, although the party did not emancipate him.

LAW XLVI.

Whether the Sale of a Slave Made Under the Condition that He Never Can Be Emancipated Is Valid or Not.

Slaves are naturally accustomed to commit offenses against their masters except where they are deterred from doing so through fear of punishment, and for this reason we decree that where a slave commits such an offense against his master that he is compelled to sell him, he has a right to insert as a penalty in the bill of sale, that he never can be emancipated. If the purchaser accepts him under such an agreement, said slave can never obtain his freedom, no matter through how many hands he may pass, except in three instances. First, where said slave knew positively that certain persons were endeavoring to bring about the death or dishonor of the lord of the land and discloses this, by notifying him of it either personally or through another party. Second, where he avenges the death of his lord, by himself killing the party who killed the former, or by accusing him before the judge of the district and prosecuting the case until he is put to death. Third, where the party who purchased him according to such an agreement, bought him with money belonging to said slave, or to his relatives, and not with his own money. Although the sale was made under an agreement of this kind a slave can become free for any one of these reasons.

¹ A provision of this kind, while valid under the Roman system and the Common Law, is not so under our statutes, which regard entailed estates as tending to foster an aristocracy, and contrary to the policy and traditions of a republican form of government. As a rule, when such estates are created by deed or will they are limited to the lives of such grantees or devisees as are in existence at the time and their immediate descendants, and every estate of this description remains to the issue of the first grantee absolutely in fee simple.—Ed.

LAW XLVII.**Concerning a Contract or Agreement Under Which a Master Can Sell His Slave, and According to the Terms of Which He May Be Removed from Some Certain Locality and Not Be Brought Back.**

A vendor can sell a slave under a contract or agreement of another kind, when he makes a sale of him, in addition to the one we mentioned in the preceding law. As, for instance, where he says to the purchaser: "I sell you this slave with the understanding that he will never enter this town from this day henceforth, and will not remain in any part of Spain; and if this agreement should be violated in any way that I, myself, can take possession of him and return him to my service, or that you pay me so much as a penalty, for all damages and losses which I may incur on this account;" a contract of this kind inserted in a bill of sale should be observed, and the vendor can demand that it be carried out in the way agreed upon. If, however, the slave should do any of these things without the knowledge of the party who purchased him, having become a fugitive, or through inducements fraudulently held out to him by the vendor; in this case the purchaser will not be liable to the penalty contained in said agreement, for the reason that the slave came into said locality where he was forbidden to come, without the fault of the party who purchased him.

LAW XLVIII.**Concerning Property Which a Man Purchases with His Own Money, in the Name of Another Party and Whether Contracts Entered Into with Regard to Said Property Are Valid.**

Where a man purchases property in the name of another with his own money, and the person in whose name he buys it confirms the purchase when he learns of it, then the party who made said purchase, is bound to deliver the property to him in whose name he bought it, along with its rents and profits and everything else belonging to it. Moreover, we decree that the party in whose name said purchase is made is bound to refund the price to the purchaser, with all the expenses incurred by him in gathering the crops, or doing anything else which was to the advantage of the property purchased. We also decree, that where a man sends a messenger, addressing him as follows: "Go to Such-and-Such a person, and say to him that if he will sell me such-and-such property, I will pay him such-and-such a price for it; and the party to whom he sends him agrees to the sale of said property for the price which is offered, the sale shall be valid, although no power of attorney had been given the messenger authorizing him to make the purchase. And, moreover, he in whose name the sale and purchase was made should keep all the contracts and agreements which the party who acted for him entered into, because since he consented to the purchase he must ratify it. The same rule shall apply when one man appoints another his agent, giving him power to sell or purchase some property in his name, and designating the price for which it should be sold or purchased, and said agent agrees to said sale or purchase in the name of the other party, the party who appointed him should confirm the same, and will be bound just as if he himself had made it.

LAW XLIX.**Which Treats of Men Who Purchase Lands with Money Belonging to Others of Which They Have Charge; Said Lands Should Belong to Them Except in Certain Cases.**

Men who have in their keeping money belonging to other parties sometimes purchase lands or other property they have need of for themselves, and for the reason that some persons may be in doubt as to whether the property purchased in this way belongs to the party who bought it or to the owner of the money, we desire to speak of and explain this here. We decree that it shall belong to the party who made the purchase in his name, except where said money belongs to a knight employed at the court of the king or somewhere else in his service; or where the party is under twenty-five years of age, and his guardian makes the purchase for him; or where the money belongs to some church and the prelate and the party who is guardian at the time makes the bargain; or where the money is part of the dowry of some woman, and her husband makes the purchase with her consent. In cases of this kind, although the purchaser may buy the property in his own name, the party to whom the money belonged which was paid as the price of the same, is entitled to its ownership. Nevertheless, each of said parties has the choice to take the property, or the money, whichever he prefers.

LAW L.**Where a Man Sells Property to Two Men at Different Times, Which of Them Is Entitled to It.**

Where a man sells the same thing twice to two men at different times, and the one to whom he first sold it obtains possession of it and pays the price, he, and not the other, is entitled to it. The vendor is, however, bound to return the price to the party to whom he sold it last, if he received it, and, in addition, all damages and losses by person of said sale, because he made it fraudulently. We also decree that where the last purchaser obtains possession and has it, and pays the price, he and not the first purchaser, is entitled to the property. Moreover, the vendor is bound to return the price, if he received it, to the first purchaser, together with all damages and losses which he may have incurred on this account. We also decree that where anyone sells two men the property of another at different times, and it happens that there is an agreement between both purchasers with regard to said property, whichever one of them first obtains possession acquires the best right to the same, and it should belong to him, although he may not have paid the price, and even if the owner of said property comes and claims it, the right of the former to the same shall remain unimpaired.

LAW LI.**Where a Man Sells the Property of Another Person to Two Men Twice, Which of Them Is Entitled to It.**

Where a man sells property belonging to another party to some one else and immediately gives him possession of it, and, after he has sold it in this way, the vendor obtains the ownership of said property; as, for instance, where the owner appointed him his heir, or transferred it to him in some other way; and if, by the reason that he obtained the ownership of said property, the vendor afterwards sells it to some other party, and the last purchaser brings suit for it against the first; we decree that the first purchaser has a superior right to it because he first had possession, although the last purchaser might

allege that he had a better claim to said property, because when the vendor sold it to the other purchaser he did not have the ownership of it, and he had already obtained it when he sold it to him. But where a man sells another property which is not his, and the owner of the latter subsequently sells it to some one else, the last purchaser has a superior right and is entitled to it, except where the party who sold it in the first place had a lawful reason for doing so, as, for instance, where he held it as security; or when it was pledged to him he received it on the condition that he could sell it if it was not redeemed by a certain day; or where he is an attorney, and by his power of attorney he was granted permission to sell it, and did sell it before he knew that the owner of the property wished to dispose of it to someone else.

LAW LII.

Judges Who Have Power to Order Delivery of Property by Reason of Their Office, Can Sell Property Belonging to Others.

Judges who have authority to order delivery to be made, by reason of their office, can order property thus delivered to be sold, in order to carry out the decision of the court, and the ownership of property purchased under these circumstances vests in the purchaser. We decree that collectors of the revenues of the king can also do this, and whatever they receive, or seize, instead of the delivery of said revenues, can be sold by them. However, any of the aforesaid persons who have authority to make such a sale, should do this publicly and not by stealth; putting up the property at auction and causing it to be proclaimed, and they should not sell it until ten days have elapsed, and they should then sell it for the most that can be obtained for it, and where it is sold for more than the claim upon it the balance must be returned to the owner of the property. Where judges and other officials cause sales to be made of the property of others in any other manner, we decree that such sales shall not be valid.

LAW LIII.

Concerning the Property of Others Which the King Sells or Gives Away as His Own.

Where the king sells or gives away, as his own, property belonging to someone else, the ownership of said property passes to the person to whom it was sold or given. Nevertheless, the party from whom it is taken can ask within four years that an appraisal of said property be made, and the king should pay for the same, and if the party does not ask for an appraisal within four years he cannot do so after that time. Moreover, we decree that if the king owns any property in common with others he can sell or give away the whole of it, on account of the share which he has in it, and the ownership of the same passes to the party to whom it was sold or given, but he should give the appraised value to each one of the others interested, according to the share owned by each in said property.

LAW LIV.

Where a Man Sells to Another Property of a Third Party in the Name of the Owner of the Same.

Where one man sells to another the property of a third party, in the name of the owner of the same, and the latter confirms the sale after it has been made, it is valid, and the title passes to the purchaser, although in the beginning the sale was not made with the consent or knowledge of the party to whom said

property belonged. But where he does not make the sale in the name of the owner, but in his own name, and the party who buys it knows that the property does not belong to the person who sells it; in this case the ownership does not pass to the purchaser, nor can he obtain it by lapse of time, but we decree that the owner can claim it, and is by all means entitled to recover it. If, however, a purchaser of this kind acted in good faith when he bought the property, not knowing that it belonged to someone else, but believing that it was owned by the party who sold it, in this case he can obtain its ownership by lapse of time, and the vendor is absolutely bound to return the price to the owner of the same. We also decree that where a man sells property as his own which belongs to someone else, and after the sale has been made the property is lost or perishes, the owner of said property can ratify the sale, and demand the price of the vendor, whether the sale was made in the name of the owner or not.

LAW LV.

A Sale Made by One Person of Property Owned in Common Will Be Valid, Although No Division Took Place Between the Parties.

Where two or more men hold property in common, we decree that either of them can sell his share without making a division of said property, and he can sell it to any of those who have a share in it, or to a stranger; but if any one of those who have a share in said property is willing to give as much for it as the stranger, he should have it rather than the latter. A sale made to a stranger, it is understood, should be effected before a suit has been brought for partition, for where a suit has been brought for partition in court a sale cannot be made to a stranger until the property has been divided, except with the permission of the other parties.

LAW LVI.

Where a Man Influenced by Fear or Force Buys or Sells Property for Less Than a Fair Price.

Where a man, influenced by fear or force, buys or sells property, the transaction will not be valid, but we decree that the purchase must be set aside if it can be proved that the force or fear was of such a character that the party was compelled to make such a purchase, in spite of himself. And even if the sale was made under oath or by pledge, or with security, or under a penalty attached to it, it will not be valid; for since the sale or purchase which is the principal part of the transaction, is not valid, neither should the other matters dependent upon it be so. Moreover, we decree that a sale made for less than half of the fair price which the property was worth at the time when the sale was made, can be set aside; and where the vendor can prove this, he can demand of the purchaser to make up to him as much as the property at that time was justly worth over and above what he paid him for it; and if the purchaser is not willing to do this, he should deliver the property to the vendor, and receive from him the price which he paid him for it. A sale is made for less than half the just price when property which is worth ten maravedis is sold for less than five.

We also decree that where the purchaser can prove that he paid for the property more than half of the fair price which it was worth at the time when he bought it, he can demand that the sale be set aside, or that the price be reduced in proportion to the amount of the excess which he paid. This would be the case where the property was worth ten maravedis, and he paid more than fifteen for it. We decree that the vendor or purchaser can make claims of this

kind, where the property sold has not been destroyed, or is not dead, or greatly depreciated in value; for, if any of these things should happen, a demand of this kind cannot subsequently be made. Moreover, we decree that where the purchaser or vendor swears, when the purchase or sale is made, that he will never ask that the sale be set aside, although the property may be worth more or less than the amount paid for it; where the party who sold said property is over fourteen years of age when he made oath the oath should be kept, and it cannot be rejected, or the sale set aside, on this account. But where the party is under fourteen years of age his oath will not be valid, and the purchase or sale can be set aside, just as if he had not been sworn.

LAW LVII.

A Sale Fraudulently Made Should Be Set Aside.

Where a man owns a tract of land, a house, or a vineyard, in some place where he does not live, and does not know what it is worth, and has never seen it, and does not wish to dispose of it, and some other party gives him fraudulent reasons so that he is compelled to sell it; we decree that a sale of this kind can be set aside and shall not be valid, whether the property is sold for less than it is worth or not. But where the party who owns the property desires to sell it, and the purchaser deceives him by concealing something from him relating to the land, or other property sold, or by fraudulently making him believe that, although the land has certain appurtenances, they are under the control of some other party, and were difficult to recover and were lost; in this case we decree that the sale shall be valid for the reason that the vendor was willing to make it. The purchaser is, however, bound to make amends for the fraud which he committed, so that the vendor may receive the just price of the property which he sold him along with its appurtenances which were fraudulently concealed.

LAW LVIII.

How a Sale Can Be Set Aside, Where the Purchaser Does Not Keep the Agreement He Entered Into with Regard to It.

Men are sometimes induced to sell their property by reason of a contract made with them before the sale, or in consideration of something promised them, so that if it had not been promised them they would not have been willing to sell it. Wherefore, we decree that when anyone sells his property in compliance with a contract which is proper in every respect, that said contract must be kept, for if it is not observed in the way which was agreed upon, the sale must be set aside on that account. But where the sale was made in some other way and not especially on account of some contract, but where the purchaser and the vendor agreed upon the sale and voluntarily entered into a contract afterwards on account of it, the sale will then be valid and cannot be set aside, even though the agreement was not carried out, but the party who made the agreement is bound to comply with it, and to make good to the other all damages and losses which may arise by reason of his nonobservance of the contract entered into with regard to the sale.

LAW LIX.

Concerning a Man Who Secretly and Fraudulently Purchases Property Belonging to Some One Who Is a Taxpayer, in Order to Make the King Lose His Taxes.

Where any man who is a taxpayer or debtor of the king sells his property secretly and fraudulently, in order to make him lose his taxes or his revenues, or some debt which he owed him, a sale made in this way will not be valid,

but should, by all means, be set aside. Where the purchaser was aware of this fraud, and acted with knowledge of the facts, he is bound to pay to the king out of his own money an amount equal to that with which he purchased the property aforesaid.

LAW LX.

How a Sale Made by a Slave of the Property of His Master Can Be Set Aside.

Where one man appoints another to take charge of all his business and, while he is still employed the other party appoints him his heir, he not being aware of the fact; and it happens that the party who appointed him both as his agent and heir dies; and the slave of the deceased sells some of his property to another party, a sale of this kind will not be valid, and the heir can set it aside, whenever he learns of it, before the property passes into the hands of the purchaser. This can be done although the party himself was present at the purchase and had been called as a witness to it, and even if he had signed his name to the bill of sale. This is the case because he did not know that he had been appointed the heir, for if he had known it, he might not have consented for the sale to be made. However, where said slave occupied such a position, during the life of his master, that he was accustomed to sell certain property for him, although the heir can set aside the sale for the reason aforesaid, he is nevertheless bound to make good to the purchaser the damages and losses which he suffered by reason of said purchase, out of the property which said slave holds as his own, if he has any.

LAW LXI.

Men Who Change Their Minds for the Purpose of Annulling Sales Cannot Set Them Aside, Although They May Obtain Letters from the King to Do So.

Some men, after they have sold their property, are sorry for having made such sales, and wishing to have them set aside, petition the king to order letters to be given them for this purpose. Wherefore, we decree that such letters shall not be granted them, and if they are, they will not be valid; for it is not proper that, after a sale has been made lawfully and with the consent of the vendor and purchaser, it should be annulled either through compulsion or fear employed by one of the parties. Moreover, we decree that although the vendor may repent of having made such a sale after it has been effected, and states to the purchaser that he will give double the price, and that he should return him the property; even in this case the sale need not be annulled, or the purchaser be required to do this if he does not so desire.

LAW LXII.

Concerning Those Who Desire to Have a Sale Set Aside, Which They Have Voluntarily Made, Although They Allege That They Made It While in Great Distress.

Where a party desires to have a sale set aside which he made voluntarily, alleging that he sold the property on account of the great pressure of hunger he was under at the time, or because of the heavy taxes he was compelled to pay on the property which he sold; or for some other such reason, we decree that this will not be sufficient to set aside the sale. Moreover, we decree that where anyone wishes to have a sale set aside, stating that he sold the property for less than it was worth, this cannot be done for a reason of this kind, except where the sale was made for less than half the fair price, as

previously stated in the laws of this Title, or where he can prove that the sale was made through fraud knowingly committed by the purchaser, the vendor not being aware of the value of the property, or never having seen it, as we stated above.

LAW LXIII.

Concerning a Castle or a Tower Sold by One Man to Another, to Which Some Servitude or Tribute Was Attached Which Was Concealed by the Vendor, and Whether a Sale of This Kind Can Be Set Aside.

Where one man sells another a house or a tower, encumbered with some servitude or tributary to another piece of property, and the vendor is silent concerning it, and does not inform the party who purchased said property of its existence, the purchaser can have the sale set aside for this reason, and the vendor is bound to return him the price, and, in addition, all damages and losses which he may have incurred on this account. Moreover, we decree that where one man sells another a field or a meadow, where he knew that weeds which were bad and injurious to the animals which feed upon them grew, and when he sold said property was silent, because he did not wish to inform the purchaser of the fact; the vendor for this reason will be bound to return the price to the purchaser, and, in addition, all damages which he sustained by reason of the sale; but where the vendor was not aware of this when he sold said property, he will not be bound to return any more than the price.

LAW LXIV.

Concerning a Fault or a Bad Quality Which a Slave Has Who Is Sold by One Man to Another.

When a slave sold by one man to another has a fault or a bad quality, as, for instance, if he is a thief, or is accustomed to run away from his master, or has some other bad habit like these, and the vendor was aware of this and did not mention it to the purchaser; he is bound to take back the slave and return to the purchaser the price he paid, and, in addition, all damages and losses which he sustained on this account. If he was not aware of the bad habits aforesaid, the slave should remain with the purchaser, but the vendor will be bound to return him as much of the price as it may be ascertained his value was depreciated by reason of said fault. We decree that the same rule shall apply where the slave has some serious secret disease.¹

¹ The legal restrictions attaching to the sale of a slave were, in general, the same as those under which other chattels were alienated, but considering the ordinarily superior value of the subject, and the greater facilities for the commission of fraud, they were, everywhere made more stringent and clearly defined.

It was the established custom at Rome only to sell inferior slaves at auction or public sale, others were privately transferred from one master to another. The seller usually gave a general warranty against all blemishes and faults, or a special one against such undesirable habits and tendencies as dishonesty, absconding, epilepsy and suicide. This was in writing and was suspended about the neck of the slave. The warranty, when not otherwise specified, was for six months, within which period the purchaser could rescind the contract, if any of these defects appeared. In the case of a minor, the time was extended to a year. "*Qui mancipia vendunt, certiores faciant emptores, quid morbi vitiiue cuique sit, quis fugitivus, errove sit, noxave solutus non sit; eademque omnia cum ea mancipia veniunt, pulam recte pronunciant.*" (Corp. Jur. Civ. Dig. XXI-1-1.)

By Moslem law, an implied warranty goes with the sale of every slave, the burden of proof establishing the existence of a defect resting upon the purchaser, who must make good his contention in court. The most serious defects are a disposition to abscond, or to commit theft, insanity, and infidelity in males; offensive odors, whoredom and various constitutional infirmities in females. (The Hedaya XVI-IV.)

Under the Louisiana Code, leprosy, madness, epilepsy, guilt of a capital crime, dishonesty, and a habit of running away, were the principal vices of slaves. The sales of slaves were required to be in writing, under private signature, and to be made with as much care and ceremony as transfers of real property. When made verbally they were void *ad tñtio*, and no evidence to establish them could be admitted. (Civ. Cod. of La. VII-1. Art. 2451, 2502, 2505.)—Ed.

LAW LXV.**The Sale of a Horse, Mule, or Any Other Animal Made by One Man to Another, Can Be Set Aside, Where the Vendor Conceals Any Blemish or Defect Which the Animal Has.**

When one man sells another a horse, a mule, or any other beast of burden, which has some serious disease or any blemish which lessens its value, and the vendor is aware of this when he sells it, he should say so, and if he does not, as soon as the purchaser learns of said disease or blemish, he can, within six months, return said animal to the vendor, and recover the price he paid for it, and the vendor is bound to take it back and return the price to the purchaser, although he may not desire to do so. If the purchaser does not demand the price within six months he cannot do so afterwards, and the sale will be valid, although within a year the purchaser can demand of the party who sold him the animal to pay him for it, or return him as much of the price as it is found the value of the animal is diminished on account of said blemish or disease which it has. After these periods have elapsed the purchaser cannot make a demand of this kind. The said terms of six months and a year, as aforesaid, should be reckoned from the day on which the sale was made.

LAW LXVI.**The Sale of an Animal Cannot Be Set Aside When the Vendor, at the Time When He Sells It, Publicly Mentions the Disease Which It Has.**

Where the vendor plainly informs the purchaser of the slave or the animal which he sells him, of the fault or the disease which it has, and the purchaser, being thus made aware of it, is willing to buy it and take it as his own, and pay the price for it, and after this desires to change his mind, he cannot do so, and the vendor will not be obliged to take the property back, or to return him the price. We decree that the same rule shall apply where both parties agree upon the price, and the sale was made in such a way that no matter what fault the animal may have had the purchaser could not reject it. But where the vendor states, in a general way, that the animal he sells has faults, and conceals them by not mentioning them, or fraudulently confuses them with others so that the purchaser cannot notice them; we decree that in a case of this kind he shall be bound to take back the property and refund the price, within the terms mentioned in the preceding law.

LAW LXVII.**Concerning a Purchaser Who Places Property in Pledge After He Has Bought It, and Which Should Be Returned to Its Owner If the Sale Is Set Aside.**

Where a purchaser, after he has bought property in any of the ways we mentioned in the preceding laws, pledges it to another person, and after this the sale is set aside for any of the reasons above mentioned; then the person who holds said property as security is bound to return it to the vendor to whom it belongs, and can make a demand upon the party who pledged it to pay him what he let him have on it as security. We also decree that where a man pledges any property to another, binding himself so that he cannot sell it, give it away, or dispose of it in any manner until it has been redeemed; and after he has pledged it in this way he sells it to another party, the sale will not be valid, and can be set aside for this reason.

TITLE VI.

Concerning Exchanges Made by Men with One Another and What an Exchange Is.

The exchange of one piece of property for another is a kind of contract which resembles a sale and purchase more than any other. For as a man obtains the property which he has purchased by means of the price which he pays for it, so, on the other hand, he obtains it for what he gives for it in exchange. Wherefore, since in the preceding Title we treated of sales and purchases, we desire to treat here of exchanges. We shall show what an exchange is; how it is made; who can make it; of what property it can be made; what effect it has; for what reason it can be set aside after it has been made; and, above all, we shall explain other contracts called, in Latin, *contractus innominati*, which bear a resemblance to exchange.

LAW I.

What an Exchange Is and How It Is Made.

An exchange is the gift or grant of one particular piece of property for another. An exchange can be made in three ways. First, when it is done with the approval of both parties, and with their consent and promise to comply with it, as where one says to the other: "Are you willing to exchange your property for mine?" (naming each of said articles specifically,) and the other answers: "I am willing, and I agree and promise to do so." Second, when this is done simply by words, and the parties do not agree or promise to do this; as where one of them says: "I wish to exchange such-and-such property with you;" and the other answers that he is willing, and the exchange is made by words of this kind or others like them, although the property exchanged is not at hand, nor passes into possession of either of the parties. Third, where the exchange is made verbally, and both, or only one of the parties afterwards carries it out. In an exchange of this kind any statements by the parties are sufficient, but it must be made with the consent of both, and one of them must receive the property for which he exchanges his own.

LAW II.

Who Can Make an Exchange, and of What Property It Can Be Made.

All the men mentioned in the preceding Title who can purchase and sell property can exchange it, and we also decree that those who cannot make purchases or sales cannot make exchanges. Moreover, we decree that all property which can be bought and sold can also be exchanged, with the exception of spiritual property, which although it cannot be sold can be exchanged; as, for instance, one church can be exchanged for another, or one bishopric for another, or one prebendship for another, and the titles of one church can be exchanged for those of another. The exchange of property of this kind or of some other similar to it, should, however, be made with the permission of the prelate who has jurisdiction over the locality where the property it is desired to exchange is situated. Where this is done in any other way it will not be valid, as we stated in the First Partida of this book in the laws which treat of this subject.

LAW III.

What Force an Exchange Has.

An exchange made orally, accompanied with a promise to carry it out, has such force that if either of the parties afterwards desires to annul it, the other who wishes the contract to be carried out and to stand, can peti-

tion the judge to order the former to comply with his agreement and complete the exchange, or pay all damages and losses resulting from his not being willing to perform his part of the contract. Losses of this kind are called, in Latin, *interesse*. But where the exchange was made only verbally, by one of the parties saying: "I wish to make an exchange of my house with you;" and the other party says simply that he is willing, without making any other promise, as aforesaid; in this instance, either of the parties can withdraw, and will not be compelled to complete the exchange made in this way. Where the exchange has already begun to be carried out by the act of one of the parties giving or delivering the property which he promised to exchange, and the other party, after this, is not willing to give what he promised; we decree, in this case, that the party who complied with his part of the contract has the choice of recovering what he gave, or of demanding of the other the damages and losses which he sustained on this account. Said losses should be determined and paid under the oath of the party who is entitled to them, after having been previously estimated by the judge.

LAW IV.

In What Way an Exchange Can Be Annulled After It Has Been Made.

Where a man exchanges any property of his own for that of another, as, for instance, a slave or a beast of burden, he should mention to the party with whom he makes the exchange, the blemishes and defects of the property which he exchanges. Where he knowingly conceals this, the exchange can be annulled for this reason within the same period of time, and in the same way which we explained above with regard to property which is sold. Moreover, we decree that an exchange can be annulled for any of the reasons stated in the preceding Title on account of which sales can be set aside. We also decree that parties who make exchanges are bound to make good to one another the title to the property exchanged.

LAW V.

Concerning Contracts Called in Latin *Contractus Innominati*, Which Bear a Resemblance to Exchange.

Contractus innominati, in Latin, means in Castilian, contracts and agreements entered into by men with one another, which have no particular names, and of these there are four kinds. First, when anyone gives his property for some other, and this is the exchange of which we treated in the preceding law. Second, when someone gives property to another, (provided he does not give him ready money) in order that he may do something for him in return for it. In this case we decree that where the party does not comply with what he promised, the other has the choice of demanding of him the property which he gave him for this purpose, or of requiring him to pay the damages and losses which he suffered on this account, which should be established by means of his oath and by the estimate of the judge. Third, when a man performs some special service for another in order that he may do something for him in return; for if, after he has done this, the party should not give him what he promised him, he can sue him for fraud, and the amount should be paid with the addition of the damages and the losses, as we stated above. Fourth, when a man does something for another in order that the party for whom he does it may do something in return for it for him. In a case of this kind we decree that where one of the parties did what he agreed to, he can make a demand upon the other to comply with his obligation, and to pay him the damages and losses which he sustained on this account, and which should be estimated as aforesaid.

TITLE VII.

Concerning Merchants, Fairs, and Markets, and the Taxes and Tolls Which Must Be Paid on Account of Them.

Merchants are men who are especially accustomed to sell, purchase, and exchange property with one another, for which reason the wealth and the profits which they make by buying and selling property are principally obtained at fairs and markets, and more frequently there than elsewhere. Wherefore, since in the preceding Titles we spoke of Sales, purchases, and exchanges, we desire to speak here in this Title of Merchants, fairs, and markets. We shall show what merchants are, and what they are compelled to do and to observe. And afterwards we shall treat of markets and fairs, and how they should be held, and we shall also speak of tolls and other duties which merchants are compelled to pay on account of property which they take from one country to another, and by means of which they profit.

LAW I.

Concerning Men Who Are Properly Called Merchants.

All those who sell property and purchase it of others, with the intention of disposing of said property to someone else in order to profit by the sale of the same, are properly called merchants. And what they are compelled to do and observe is the following, namely; they must make use of their calling faithfully, not mingling or covering up the property which they sell with any other, by means of which it may be adulterated or depreciated in value. Moreover, they should be careful not knowingly to sell one thing for another, and they should use lawful weights and measures, according to the custom of the country or kingdom where they reside; and when they take their merchandise from one place to another they should go by travelled roads, and pay their duties to those to whom they are required to pay them. When they violate these regulations they will be liable to the penalties mentioned in the laws of this Title.

LAW II.

Concerning the Combinations and Agreements Which Merchants Enter Into With One Another, by Making Oaths and Forming Brotherhoods.

Merchants enter into combinations and agreements among themselves taking oaths, and forming brotherhoods for the purpose of aiding one another, establishing prices as to how much a yard they shall pay for every kind of cloth, and also how much they will give according to the weight and measure of other articles, and no less. Moreover, artisans enter into combinations among themselves as to the prices they will pay for each of the articles which they make use of in their trades. They also enter into agreements that no one else can work at their trades, except those whom they receive in their associations, and moreover that those received in this way shall none of them finish what others have begun. They also established a combination of another kind, by which they agreed not to teach their trades to others, excepting such as are descended from their own families; and for the reasons that many wrongs have resulted therefrom, we decree that any brotherhoods, contracts, or combinations, such as those aforesaid, or any similar to them shall be established with the knowledge and consent of the king, and that if this is done without said knowledge and consent, they shall not be valid; and also

that all those who establish any in this way from this time forward, shall forfeit all their property to the king, and that in addition to this they shall be banished forever from the country. We also decree that where the superior judges of a town consent to the establishment of said combinations, or if after they have been established, they do not cause them to be dissolved, if they are aware of their existence, or do not send word to the king that he may dissolve them, they shall pay to the king fifty pounds of gold.¹

LAW III.

Concerning Fairs and Markets, in Which Men Are Accustomed to Make Sales and Purchases.

Fairs and markets where men are accustomed to make sales, purchases, and exchanges, should not be held in other places except those in which it has been customary to hold them from ancient times, except where the king gives authority by his concession to certain localities to establish new ones. We also decree that where fairs of this kind are newly established, the lords of the locality where they are held should use no compulsion upon the merchants who frequent them, by demanding tribute of them for the property which they bring there on account of the fair, nor under any other pretext, except such as may be conferred upon them by the special grant establishing the fair. And although they may be compelled to pay an acknowledged debt, contracted before the fair was established, and owing to the lord of the neighborhood or any one of its residents, they should not be brought into court on account of said debt, nor should any of their property be seized or taken from them, while the fair lasts.

¹ The origin of guilds, or corporations for the better exercise of the various handicrafts—the precursors of our labor unions—is of remote and unknown antiquity. Classical writers have attributed their institution to Numa Pompilius, whose intention was to remove the hereditary enmity of the Romans and Sabines, and substitute for it the innocuous rivalry of organizations established for the purpose of the improvement of manufactures, and the consequent increase of commercial advantages. The guild, the practice of whose trade was at first restricted solely to members of certain families is, however, in all probability, derived from the Greeks, and is much older than the foundation of Rome.

The laws of Justinian, quoting from Solon, refer to such bodies as already long established, and entitled to the enjoyment of certain rights, and especially to that of institution without previous application to the state. "*Si autem tribus, vel curiales, vel sacerdotum nuntiatores, vel convictores, vel sepulchri collegie consortes, vel qui ad praedam negotiationemve proficiscuntur, quidquid hi disponant inter se, firmum sit, nisi hoc publicae leges prohibuerint.*" (Corp. Jur. Civ. Dig. XLVII-XXII-4.)

In Greece, these organizations had their regular assemblies, each held fairs and exhibitions under the auspices of its individual handicraft, where prizes were awarded to the most skillful artisans; and so highly was manual labor considered, that a law was in force at Athens imposing a penalty upon any person who spoke disparagingly to another of the occupation in which he was engaged. Some of these bodies enjoyed special exemptions and other privileges under the emperors. "*Non omnia tamen corpora, vel collegia vacationem tutelarum habent, quamvis muneribus municipalibus obstricta non sint: nisi nominatim id privilegium eis indultum sit.*"

"*Mensores frumentarios habere ius excusationis.*" (Corp. Jur. Civ. Dig. XXVII-I-17-26.)

As a rule, however, the Romans viewed such corporations with more or less suspicion, and even a technical breach of the law, or a violation of the provisions of a charter, caused the offending body to be included among the *collegia illicita*, and its members to be subjected to severe penalties.

Persons who deliberately produced a scarcity of provisions, in order to enhance the price, were styled *dardanarii*, and were either forbidden to again exercise the calling of merchants and banished, or were condemned to hard labor on the public works. "*Poenam autem in hos varie statuitur; nam plerumque, si negotiantes sunt, negotiatione eis tantum interdicatur, interdum et relegari solent, humiliores ad opus publicum dari.*" (Corp. Jur. Civ. Dig. XLVII-XI-6.) Those who adulterated food were placed in the same category as the forgers of wills, and incurred liability to the same punishment as the latter.

Engrossing and regrating, which included the accumulation of large quantities of the necessities of life as well as other commodities, either by individuals or corporations, for the purpose of profit at the expense of the general public, were serious offenses at common law. Conspiracy by organizations to raise the price of wages, or the intimidation of artisans by them is, under the English statutes, punished by fine and imprisonment.

The Penal Code of Spain prohibits the union of persons with a view to the increase or diminution of the price of labor, or to regulate its conditions, under the penalty of imprisonment for from one year eight months and one day, to two years and four months. The artificial increase of the value of any kind of merchandise by false representation or any other unfair means, incurs not only the above mentioned penalty, but also a fine of from 500 to 5000 pesetas (\$100 to \$1000). (Código Penal de España XIII-V. Art. 556-558.) The laws of France and Italy contain similar regulations against oppressive restrictions of commerce and the tyranny of labor organizations, but the penalties imposed are, as a rule, somewhat more severe. (Code Pénal de France, III-II-Art. 414-419.) (Codice Penale d'Italia, II-II-6. Art. 165-167, VI-V. Art. 293.) As may well be conjectured, there are, in the face of such drastic provisions, few attempts made by any systematic combination of either labor or capital, with the object of personal gain at the sacrifice of social rights and public justice, to oppose the people in any of the above-mentioned countries.—Ed.

Where merchants enter into any contracts or make any debts, after they have come to new or old fairs, or where they have promised to comply with others made elsewhere and to pay debts of this kind, they are bound to do so, and if they refuse, the judges and chief officials of the fairs may compel them to perform said obligations. Moreover, we decree that where any man or any council obtains a special grant by which he has the right to establish a new fair, as aforesaid, and after he has obtained it, ten years elapse before he makes use of it, from that time forth it shall be invalid.

LAW IV.

How Merchants and Their Property Should Be Protected.

Countries and districts frequented by merchants with their merchandise are, for this reason, more wealthy, better provided, and more populous, and for this reason all persons ought to be pleased with them. Wherefore, we decree that all persons who resort to the fairs in our kingdoms, not only Christians but also Jews and Moors, and also those who at any other time visit our dominions, although they may not come to the fairs, shall be safe and secure in body, property, merchandise, and all their effects both on sea and land, while they are on the way to our dominions, while they are present there, and while they are departing from our country. We also forbid anyone to dare to employ violence against them, or do them any wrong or injury whatever. And if anyone should violate this law, by robbing them of what they bring with them or by depriving them of it by force, and the robbery or force can be established by evidence, or by any certain indications, although the merchants may not prove what property he was deprived of, or what its value was; the judge of the district where said robbery takes place should take the oath of the party, making inquiry in the first place as to what kind of a man he is, and what species of merchandise he is accustomed to deal in. And having made this investigation and appraised the amount according to the property which was sworn to, he must cause an amount of the property of the robbers equal to that which the said merchant swore he was robbed of, to be delivered to him, together with all the damages and losses resulting from the violence with which he was treated, and prosecute the robbers as the law directs. When neither the robbers, nor any property belonging to them with which reparation can be made, can be found, either the council or the lord in whose jurisdiction the place where the robbery occurred is situated, must pay said amount out of their own property.

LAW V.

Concerning Tolls and All Other Duties Which Must Be Paid by Merchants on Account of the Property Which They Take from One Place to Another.

It is but proper and reasonable as merchants are secure and protected by the king in all his dominions, that they and all their property should acknowledge this sovereignty by paying tolls on what they bring into his country to sell or take away from it; and for this reason we decree that every man who brings any property whatsoever into our dominions to sell, whether he be priest, knight, or any other person whomsoever, must pay, by way of toll, the eighth part of the estimated value of whatever he brings in to sell or takes away, except such as have a grant of exemption in this respect. If, however, any person brings in any separate property which he needs for himself or for his family, as, for instance, clothing, shoes, or food, we do not think it just that he should pay toll on what he brings for such a purpose, and not for sale.

Moreover, we decree that where he imports any implements of iron or anything else for the purpose of cultivating his vineyards, or any other lands which he possesses, he shall not be required to pay duty upon them if he does not sell them. We also decree that he shall not be required to pay duty on anything imported for the king, whether it is to be presented to him or otherwise, except where he sells it to him. We also decree that no duty should be paid upon books imported by scholars, or anything which they need for clothing or for food.¹

Moreover, we decree that where any persons come on a mission to the king, who are not his enemies, and who wish to take away certain property to their own country which is not forbidden to be removed from the kingdom, they shall not be required to pay duty on it. They should, however, be sworn that what they are taking away is not for others but only for themselves, and is not to be disposed of as merchandise. We also decree that all merchants who export or import merchandise, must travel through those places where duties are accustomed to be paid, and state truthfully to the collectors the amount of the property they import or export, not concealing anything by which the duty may be kept from those who collect said duties for Us. Where any persons violate this law, we decree that they shall lose whatever they concealed in this way, except where a knight imports property for his own use which is liable to duty, and conceals it; for in a case of this kind, we do not consider it proper that all said property should be taken from him, but he should be compelled to pay the entire duty, not only on what he concealed but also on what he declared, and he should be left in possession of what belongs to him. Moreover, we decree that all those who export horses, or any other property whatsoever which is such as is forbidden to be taken out of the country, shall lose everything which they attempt to remove in this way, except those whom we have granted authority by our letters to remove such property.

LAW VI.

Concerning Merchants Who Leave the Highways for the Purpose of Deception, or to Avoid the Payment of Duties on the Property Which They Have with Them.

Merchants, at times, leave the highways for the purpose of concealment, or to avoid the payment of duties on the property they have with them. Wherefore, we decree that any person who is guilty of this, shall lose all the property which he brings with him in this way. Where, however, the party who has left the highway has already paid the duty or the toll which he was required to do, and can produce a receipt for it, or any lawful evidence of the same which is worthy of belief, he shall not be liable to the penalty aforesaid, nor should any obstacle be placed in his way or in that of his property. Moreover, we decree that where anyone who commits any offense of this kind, who is under fourteen years of age, he shall not be liable to said penalty if he is willing to pay the duty. We decree that the same rule shall apply where a party commits an act of this description and who is more than fourteen years of age and less than twenty-five, except where it is proved that he acted knowingly and maliciously. We also decree that where a man conducts his slave through districts where he should pay duty, and does not pay it, and after this he emancipates him, neither the master nor the slave will be liable, for that

¹ This affords us an interesting view of the customs regulations of mediæval times. Their liberal character, as concerns the importation of all articles required by scholars, including their books, offers a pleasing contrast to the laws of our own country which, so far from encouraging the acquisition of knowledge by those desirous of obtaining it, imposes a heavy tax upon literature. The profound wisdom and sagacity of the great monarch to whom we are indebted for this treatise, are nowhere more clearly disclosed than in this provision, which promoted the education of his subjects and contributed to their comfort at the expense of the crown.—Ed.

reason, to forfeit anything, or pay any duty, and this is the case on account of his enfranchisement; but where he conducts a slave, as aforesaid, not paying any duty on him and does not emancipate him, then, if the collectors are informed of this and demand said slave, he must lose him. Moreover, we decree that where any man imports a beast of burden or any other living thing, on which he does not pay duty, and if, before the duty is demanded by the collectors, the animal imported in this way dies or is lost, the party who imported it is not bound to pay its estimated value. We also decree that where the collectors of duties are negligent, and do not, for five years, demand the penalties and tolls aforesaid from those who have committed offences of this kind, they cannot subsequently claim them either of them or of their heirs.

LAW VII.

Concerning the Income from Tolls, Recently Imposed on a Town or Some Other Place.

We decree concerning the income from tolls, recently imposed upon towns and other places, that the king should have two-thirds and the city, town, or castle where they are collected one-third of them, for the construction of the walls and towers of said places, and for anything else which is necessary, which may be for the benefit of the whole community; but kings should have the whole of such tolls as they have been accustomed, from ancient times, to collect for themselves in certain places. Moreover, we decree that tolls and other taxes of this description, as well as the revenues of the king, should be publicly farmed out by putting them up at auction, and given to the party who will pay most for them. The party who rents them should not, however, hold them longer than three years, and if during said term of three years anyone else will promise to pay more than the third part of the sum for which they are rented, they can be taken from those who hold them, and given to the party who will pay more for them.

LAW VIII.

Merchants Dread Sometimes to Go to Certain Places with Their Merchandise, on Account of the Wrong Inflicted Upon Them and the Excessive Tolls Which They Are Charged.

Merchants sometimes dread to go to certain places with their merchandise, on account of the wrong inflicted upon them and the excessive tolls which they are charged. Wherefore, we decree that those whose duty it is to demand or collect said tolls for us demand them in a civil manner. If they suspect that the parties are bringing in more than they declare, they should take their oaths that they are not concealing anything, and after they have done so, they must not search their persons, or open their chests, or subject them to any other outrage or injury whatever; for it is abundantly sufficient that they should be sworn and await the penalty which they must undergo if it should be positively ascertained afterwards that they have concealed anything.

We also decree that if the collectors whose duty it is to receive the duties in our towns, accept or force men who are passing through to surrender anything more than what they have a right to collect as duty, they shall be required to return double the amount to those from whom they collected it, whenever it is demanded of them within a year. And after a year has elapsed without such a demand being made, from that time forth they shall not be obliged to pay double, but they must only restore what they collected, or something else of the same kind and of as good a quality, or the value of the same. We also decree

that this rule shall apply where collectors voluntarily, before the year has elapsed, return what they have taken, without the other parties bringing suit for it in court.

LAW IX.

No Man, Council, or Church, Can Establish a Toll in the Dominions of the King Without His Order.

No man, council, or church, can establish a new toll in any of the dominions of the king, except by his order. The king can, however, impose one, and can also grant authority to another party to impose it if he thinks that there is necessity for it, for the purpose of improvising any place which is very poor, or to add to the security of the highway, or for any other reason like this. Wherefore, we decree that if anyone imposes a new toll without the order of the king it shall not be valid, and he shall be required to pay double the amount of all that he collected. Moreover, we decree that if a collector maliciously increases or diminishes the amount of toll imposed in former times, he shall, for this reason, be banished from the country, and he must return any excess which he collected, as aforesaid.¹

¹The imposition of tolls has always been accepted, without question, by persons engaged in the transportation of merchandise as a necessary and equitable regulation of commercial intercourse. "The construction and preservation of all these works being attended with great expense, the nation may very justly oblige all those to contribute to them, who receive advantage from their use; this is the legitimate origin of the right of toll. It is just that a traveller, and especially a merchant, who receives advantage from a bridge, a canal, or a road, in his own passage, and in the more commodious conveyance of his merchandise, should help to defray the expense of these useful establishments, by a moderate contribution; and if the state thinks proper to exempt the citizens from paying it, she is under no obligations to gratify strangers in this particular." (Vattel, *Law of Nat.* I-IX.)—Ed.

TITLE VIII.

Concerning Wages and Rents.

Hiring and renting are two kinds of contracts which men enter into with one another, and although some persons think that they are the same, there is, nevertheless, a difference between them. Wherefore, since in the preceding Titles we treated of Sales and purchases, and of merchants who are accustomed to make them more frequently than other men, we desire to treat in this Title of Wages and rents, and we shall show what wages and rents are; who can contract for them and in what way this should be done; what matters they relate to; how long such contracts last; at what time tenants should pay the rent or the wages which are promised, and to whom the profit belongs; who is to bear the loss where the property rented or its income is increased or diminished in value, or is destroyed; and also how, after the term of the lease has expired, or the time for which anything is hired is elapsed, the property should be returned to its owner.

LAW I.

What Wages, or Hire and Rent Are.

Wages or hire are, properly speaking, where one man employs another to perform labor, which he must do himself or with an animal belonging to him, or where one man gives another authority to use his property, for a certain price to be paid in cash. If he accepts anything else except ready money it will not be a contract for hire, but *contractus innominatus*, as we treated in the last law of the Title concerning Exchanges. And rent, in the Spanish language, is the leasing of land, or the right to collect taxes or something else for a fixed sum which is paid for it. There is still another kind called, in Latin, *navium locarium*, which relates solely to the hire of ships.

LAW II.

Who Can Rent or Hire, and for How Long a Time This Can Be Done.

We decree that every man who has power to buy and sell, as we stated in the Title of Sales and purchases and the laws which treat of this subject, can also rent and hire. Knights and officials of the court of the king, should not, however, be the lessees of the fields or the lands of other persons, because in this way their duties in the service of the king may be interfered with. A contract for hire or rent may be entered into in the same way that sales and purchases are made, with the consent and agreement of both parties, and either for a specified time or for the life of the party who hires the property, or of him who rents it to him. And if one party should lease another a house or something else for a certain time, and he who rented it dies before the time has elapsed, his heir can make use of, and profit by said property until said term has expired, and he is bound to pay for it what the deceased person rented it for. We also decree that if the owner of the rented property should die, his heir will be bound to observe the contract, as agreed upon by the deceased, and must ratify it. Moreover, we decree that all contracts entered into by men concerning rents and leases shall be valid and must be observed, except such as are contrary to the laws of this our book, or opposed to good customs.

LAW III.**What Property Can Be Rented and Hired.**

All labor which a man performs with his hands or by the aid of animals or ships for the purpose of transporting merchandise, or to make any other use of, and everything else which men are accustomed to hire, can be rented or hired. Moreover, a man can rent the usufruct of a tract of land or of a vineyard, or of any other property of this kind, by promising to pay every year a certain sum for it; but, where the party who rents the usufruct in this way dies, the right of making use of such a lease does not pass to his heir, but we decree that it shall revert to the owner of the property, for the lease of said usufruct is of such a description that it is terminated by the death of the party who leased it. If, however, the party who has the property leased has paid the entire rent or a portion of the same for the year in which he died, and has not received any of the usufruct, the owner of the property is bound to refund to the heir of the deceased whatever he received from the latter for the year in which he died, or permit him to have the enjoyment of the usufruct for said year.

LAW IV.**When Lessees Should Pay the Lessors the Rent of the Property Which They Lease or Hire.**

Lessees should pay the rent of the property which they lease or hire at the time when the lease or rent was agreed upon, according to the custom practiced in each locality. Where no regular custom exists, and no agreement was made between the parties as to when payment should be made, it should then be made at the end of the year.

LAW V.**The Owner of Land, or of a House Can Eject the Tenant Who Rented It From Him, If He Is Unwilling to Pay What He Promised.**

Where one man rents a house of another, and does not pay him the rent at the time when he agreed to, or, at the latest, at the end of the year, as we stated in the preceding law; after that time the owner of the house can eject the party who rented it without liability to any penalty. Moreover, we decree that all the property in the house belonging to the party who rented it shall be bound to the owner of the same, for the rent and for any losses he may have sustained in regard to it; and the owner of the house has the right to retain said property by way of security (although the other party may not be willing) until he pays him the rent, or makes good any damage which he caused him. The owner of the house, however, should not take the property which he finds there and seizes as security, by himself alone, but in presence of the neighbors, reducing everything to writing before them in order that no fraud may be committed; and what we have stated above with regard to houses is understood to apply also to lands, as, for instance, vineyards and orchards which men give or lease to be cultivated. For everything which the person who cultivates them places upon them with the knowledge of the owner, the latter has a claim upon, and he can hold them as security until the lessee pays the rent which he owes by reason of the lease, if he did not pay it at the times when he agreed to.¹

¹ Under the French Code also the lessor has a lien on the property of the lessee, and he has also the right to evict him if he does not place sufficient furniture in the house to secure the payment of the rent, or provide sureties for that purpose. (Cod. Civ. de Fr. III-VIII-2, Art. 1752.)—Ed.

LAW VI.**A Lessee Should Not Be Evicted from the House or Shop Which He Rented Until His Term Has Expired, Except in Particular Cases.**

Where one man rents another a house or a shop for a certain term and the party who leases it pays him the rent he agreed to do, at the times agreed upon, he cannot evict him until said term shall have expired, except for four reasons. First, when the house occupied by the owner, or a portion of it, falls down or is about to do so, and he has no other in which to live; or he is hated in the neighborhood where he lives; or where some other reasons of this kind exist for which he does not dare to remain there; or where one of his sons marries; or where he creates his sons knights. Second, where after he leased said house some defect in it is discovered, on account of which it may fall down if it is not repaired. In these two cases the owner of the house is bound to furnish the tenant another in which to live, with which he will be content until the time when he can occupy the first, or to deduct from the rent as much as will be due, until the time comes when he can live in said house. Third, when the party who rented the house does not take good care of it, but injures it so that it is depreciated in value, or takes bad women or bad men into it, by reason of which wrong is done to the neighborhood. Fourth, where he rents the house for four or five years, agreeing to pay a certain rent for it each year, and two years elapse during which he does not pay what he was required to do, for from that time forth he can be ejected. For any of the reasons aforesaid the owner of a house can eject the tenant to whom he has rented or hired the same, before his term has expired, although the other party may not be willing.

LAW VII.**Where One Man Rents Another's Fields, Vineyards, or Other Lands, the Lessee Is Bound to Make Good All Damages and Losses Suffered by the Owners of the Same Through His Fault.**

Where one man rents another's fields, vineyards, or other lands, the lessee should diligently take care of, preserve, and cultivate said lands, just as he would do if they belonged to him. The labor he performs on them should be done at such times and in such a way that the trees and other property belonging to the land or to the house which he rented improve and receive no deterioration. And if he should happen to cultivate said lands badly, and at times when he ought not to do so; or if the property which he rented should be depreciated in value through some other fault of his or that of men in his employ, we order that the amount positively ascertained that said property has been diminished in value through his fault or negligence, shall be paid by him with the approval of the judge of the district, and of reliable men who understand the cultivation of the soil. We decree that the same rule shall apply where a party rents a house, and has enemies or persons who bear him a grudge, and on account of the dislike which they have to him cut down trees, or do some other damage to the property.

LAW VIII.**For What Reasons a Man Is Bound to Pay, or Not to Pay, for Property Which He Has Hired or Rented, If It Is Lost or Dies.**

Where a man promises to transport on his own shoulders, or on some beasts of burden belonging to him, or in a cart, or in a ship any wine, oil, or other such property in leathern bottles, jars, or casks; or marble pillars, or flasks or in anything of this kind, and while taking it from one place to an-

other, and through the fault of the party who is conveying it it falls and is broken, or is lost, he is bound to pay for it. But where he takes as good care as he can in transporting said property, or where it is broken by some accident without his fault, in this case he should not be obliged to pay for it.

Moreover, we decree that where property which anyone has hired is lost or injured, or dies, through some accident which happens without the fault of said party; as, for instance, where a slave or animal dies a natural death, or where the property was a ship and it was in danger on account of a storm which arose; or where it was a house and it was burned; or where it was a mill which was carried away by an inundation; where through any cause like these property was lost or perished on account of accidents such as the aforesaid, the party will not be bound to pay for the property which he had rented, except in certain cases. First, where, when he rented the property he had an agreement with the owner of the same that, no matter what happened to it, he should be obliged to pay for it. Second, where he delayed in returning the property to the owner longer than he should have done, and, after the time had elapsed in which he should have returned it to him, it was lost or injured. Third, where through his fault, some accident happened by which the property was lost or dies.¹

LAW IX.

The Salaries of Judges, Advocates, and Artisans Should Be Paid to Their Heirs, If They Die Before Their Terms of Office Have Expired or Their Services Have Been Performed.

When Judges of the Court of the King and other officers of his palace, teachers of science who receive fixed salaries every year from the crown or from the Council of a city or town, have each begun to perform the duties of his office, although he may afterwards die before the year has expired, his heirs will be entitled to the whole of his salary for that year, just as if he had served the entire period, on account of the time he performed his duties, without regard to what this may be. This is the case because it was not in his power to comply with and perform what he should have done, but through an accident which happened to him; and which he could not avoid. But where a lawyer appears for some man to conduct a case for him, even though he may have begun the suit, he should not receive his entire fee if he did not conduct the suit to its termination; but we decree that if he dies after the suit is begun, his heirs shall be entitled to as much of his fee as it will be truly ascertained that he deserved, and no more. If the heirs, however, desire to appoint another advocate who is learned in the law, to conduct said case to its termina-

¹ The Spanish law, relative to leases, authorizes proceedings to evict the tenant when his term has expired; in default of payment of rent; where the promises have been used for purposes not stated in the contract; or where any of the provisions of the latter have been violated. (Cod. Civ. de Esp. VI-VI-2 Art. 1569.) The Civil Codes of France and Italy, as well as that of Spain, hold the lessee responsible for injury to, and destruction of the property rented, except where he can prove that it resulted from unavoidable accident, faulty construction, or irresistible force. (Cod. Civ. de Fr. III-VIII-2. Art. 1733.) (Cod. Civ. d' It. III-IX-2. Art. 1539.) (Cod. Civ. de Esp. IV-VI-2, Art. 1563.)

At common law, certainty was one of the principal elements of a valid lease: "*Id certum est quod certum reddi potest.*" A contract of this kind was not legal when based upon a contingency; as where the lease was to determine by some occurrence which might, or might not, take place, imparting such a character of indefiniteness to the transaction that the time for which the premises were to be occupied could not be positively ascertained. "Tenant for a term of years is where a man letteth lands or tenements to another for a term of certain years." (Littleton, Tenures, 58.)

Any act performed by the lessor or his agent, such as constitutes serious interference with the rights of the lessee, may be considered an eviction; but if a tenant remains in possession he must pay the rent. Even if the premises are destroyed, he will still be liable for it, in the absence of a special agreement to the contrary; a principle directly opposed to that in force in the greater part of continental Europe, where total destruction of the property rented operates, of itself, as a cancellation of the lease. "*Si, pendant la durée du bail, la chose louée est détruite en totalité par cas fortuit, le bail est résilié de plein droit.*" (Cod. Civ. de Fr. III-VIII-1. Art. 1722; Cod. Civ. de Esp. IV-I-4. Art. 1182; Cod. Civ. d' It. III-IX-2. Art. 1578.) The statutes of the various states of the Union are not in harmony upon this point, nor as to what constitutes a legal eviction. The provisions of the Civil Code of Louisiana are, with reference to the laws governing leases, almost identical with those of the nations quoted above. (Civ. Cod. of La. II-IX.)—Ed.

tion, he should be accepted, and then the entire amount of the fee should be paid. We decree that the same rule shall apply to those who contract to do certain work and promise to perform it for a fixed price; so that if they die before it is completed their heirs should have what they have earned and nothing more. Where, however, they desire to demand the whole amount, they should supply other artisans, as skillful as those who died, to finish the work.

LAW X.

Goldsmiths, and Other Artisans Are Obligated to Pay for Precious Stones and Other Articles Which They Break Through Their Fault, or Through Want of Skill.

Men sometimes wish to appear skilled in things which they are not, so that those who do not know them and believe them suffer loss; and, for this reason, we decree that where a goldsmith receives a precious stone from some person, for the purpose of setting it in a ring or in anything else for a stated price, and breaks it while doing so, through not knowing how to handle it, or through some other fault of his, he shall pay its value, as appraised by reliable men who are familiar with such matters. If, however, he can show positively that it did not happen through his fault, and that he understood his business as well as other men who ordinarily practice the trade; and that the injury to the stone happened through some blemish which it had, as from some flaw or crack in it, in this case he will not be obliged to pay for it, except where, when he received the stone to set it, he made an agreement with the owner that no matter what might happen, if the stone was broken he would bind himself to pay for the same.

What we have said concerning goldsmiths is understood to apply also to all other master-workmen, and to physicians, surgeons, farriers, and all others who receive compensation for performing any labor; or administering medicine, if they make mistakes in doing so through their own fault or through want of knowledge.

LAW XI.

Teachers Who Receive Salaries from Their Scholars for Instructing Them in the Sciences Should Punish Them in a Way So as Not to Injure Them.

Teachers receive salaries from their scholars for instructing them in the sciences, and artisans are also paid by their apprentices for teaching them their trades, in consideration of which each of them is bound to teach faithfully and to punish with moderation those whom they receive for these purposes. This punishment should, moreover, be inflicted with forbearance and prudence, so that none of the scholars may be injured, or exposed to dangers on account of the blows given him by his master; and for this reason we decree that where anyone violates this law, and gives a blow to a scholar whom he is teaching, from which he dies or becomes crippled, and the party who received the injury is free, the master must make amends for an offense of this kind, according to the decision of the judge and of reliable men. Where the injured party is a slave, the teacher must make reparation to his master, paying him what he is worth if he dies of the blow, as well as the damages and losses which he suffered on this account; and if he should not die but becomes crippled, he should pay him as much as is truly found that his value has been decreased thereby, along with the damages which he suffered by reason of said blow.

LAW XII.**Those Who Dye Silk, Cotton, or Linen, Knowing It to Be Such, Are Bound to Pay Any Damage Which May Result to It Through Their Fault.**

Where one man receives from another silk, cotton, or linen cloth, or anything of this kind, to be dyed, washed, or sewed together, and, after he has received it, knowingly, or by mistake, exchanges it by giving it to someone else instead of his own; or if it is lost or damaged, by being torn or injured by rats, or through any other fault of the party who receives it, he is bound to furnish the owner an equal amount of other cloth, similar to it and just as good as that which he received, or the value of the same, as estimated by a judge and reliable men familiar with such matters.

LAW XIII.**A Man Who Entrusts a Loaded Ship to Another Should Pay the Damage to the Merchandise and Other Property Lost by His Fault.**

Where a man has loaded a ship or other vessel adapted to navigation, and after he has placed his merchandise in it, or the property for which he hired it and the owner of the ship moves it before the arrival of the master who was to command it, he not knowing how to do this; or where the master was present and he was unwilling to obey his orders or follow his advice, and the ship runs the risk of being lost or wrecked, then all injury or loss suffered by said merchandise must be paid by the owner of the ship, for the reason that it happened through his fault, because he endeavored to do something which he did not understand, and therefore he is bound to pay for the same to the party who loaded said ship. We decree that the same rule shall apply where the owner of a vessel places merchandise in another which is not as good as the one he hired, removing them from his own without the knowledge of the merchant, and without the approval of the party who loaded the ship; and if said vessel, in which he placed said merchandise, should be injured the owner of the same, and not the merchant, must be responsible for the damage.

LAW XIV.**Concerning a Man Who Hires to Another Casks, or Vessels Defective or Cracked, for the Purpose of Containing Wine, Oil, or Something Else of This Kind.**

Where one man hires to another defective casks or any other broken vessels for the purpose of using them for wine, oil, or some other liquid, and through the defects of said vessels what is put into them is lost, deteriorated, or given a bad taste; and the party who hires said vessels did not know of said defects when he hired them, their owner is bound to pay him all damages and losses which he suffered through said defects, although he may not have been aware that they were defective or broken; and this is the case because every man should know whether the property which he hires is good or bad. Hence we decree that where a man rents another woodland or meadows for pastures for flocks or beasts of burden, and the land rented for this purpose contains poisonous plants, so that the beasts which feed upon them are killed or injured; and the owner of said land is aware of this; he is bound to state it publicly, or to pay the other party any damage or loss which he may sustain through the poisonous quality of said plants. If, however, the owner was not aware of the existence of said plants, he will not in this case be bound to pay the damage and loss; but we decree that he has no right to collect the rent, and that the other party is not bound to pay it to him.

LAW XV.**Where Shepherds and Other Men Who Are in Charge of Beasts Are Paid for Doing So, They Should Pay the Owners of the Same All Damages Arising from Their Fault.**

We decree that shepherds and other men who have charge of beasts and are paid by the owners of the same for taking care of them, must be diligent, and endeavor, so far as lies in their power, to care for them well and faithfully, so that they may not be lost or injured in any way through any neglect of what they should do; and that they must also select suitable and good places where they know the best pastures and waters are situated, and conduct said beasts there, as is proper according to the season of the year, and where they can, without danger, avoid the cold and snow of winter and the heat of summer. All those who violate this law, by not using proper care, as aforesaid, so far as lies in their power, are, every one of them, bound to pay the owner of the beasts all damages and losses resulting through their fault. And where injury happens to the beasts and one of them says it was not through his fault, but that he took all the care which he could, and that he could not prevent the injury from taking place he should be heard; and if he can prove this by any positive evidence, or otherwise, and will swear that it occurred in this way, it should avail him, and he ought not to pay for what he can establish and swears to, except where the owner of the beasts can prove that the damage resulted through the fault of the shepherd, for in this case he should not be sworn.

LAW XVI.**Master-Workmen and Laborers Who Take Work by Contract for a Stated Price, Must Pay for the Same If It Is Badly Done.**

Master-workmen and laborers sometimes undertake work by contract for a stated price, and, through a desire to finish it speedily, slight it so much that the work is defective, or they do not make it as good as they should. For this reason we decree that where anyone undertakes to construct a castle, tower, house, or any other edifice of this kind by contract, and builds it in a negligent way, or so fraudulently that it falls down before it is finished, he is bound entirely to rebuild it, or to return the owner the price of the same, together with all damages and losses which he may sustain on this account; and if the building does not fall before it is completed, and the owner learns that it is defective and not stable, he should then call together some reliable and intelligent men, and show them said building; and if they think that it is badly constructed, and know that the defect arose through the fault of the master-builder, he must entirely rebuild it, or return the price of it, along with all damages and losses, to the owner of the same, as aforesaid; but if the intelligent men called together for this purpose think that the building is not defective, and the master-workman is not at fault, but that it became damaged after it was completed, or while it was in course of construction through some accident; as, for instance, on account of heavy rains, or inundations, or earthquakes, or of something of this kind, then the master-workman will not be bound to rebuild it, or to return the price which he received.

LAW XVII.**What Labor Master-Workmen Should Perform in Return for Payment by the Owners of Property.**

Master-workmen sometimes make contracts to construct certain buildings according to the wishes of the owners of the same, saying that they will erect such-and-such a building, and that the owner can pay for it when it is

finished. For this reason we decree that where a master-workman takes a contract of this kind, and completes it well and faithfully, and the owner, when it is done, says maliciously that he will not pay for it, in order to keep the price to which the other party is entitled, or to annoy him in some other way, he cannot do this; but the contract depending upon the will of a party in this manner, as aforesaid, should be understood as follows, namely; that the owner of said building should pay for it if it is well constructed, just as other good and intelligent men would do. Wherefore, if any intelligent men, after having been shown the building say that it is good, the owner cannot, on account of such a contract, place any obstacle in the way of the master-workman, or withhold the price which he should pay him; but we decree that the judge of the district can compel him to pay him, although he may not desire to do so.

We also decree that where any man takes a contract under an agreement of this kind, that he will perform the labor in such a way that, if the building is, for any reason destroyed or demolished before the time the owner agrees to pay for it, it will be at his risk; and when the work has been completed the contractor should tell the owner to examine it so that he may pay for it, and if he delays because he does not wish to do so or if he does examine it and refuses to say that he is pleased with it, and that the work has been well done; and, after that time, the building is destroyed or demolished by an accident which did not happen through the fault of the master-builder, nor on account of any defect in the work; then the owner of the property, and not the contractor, shall be responsible. Moreover, we decree that if the owner is pleased with the building and, after he admits that he is content with it, it is demolished or injured, from that time forward he, and not the master-workman, will be responsible.

LAW XVIII.

Property Should Be Returned to the Owner When the Term of the Lease Has Expired.

When the term for which it was hired has expired, property should be returned to the owner in the same condition in which it was given, and if the party who has possession of it is obstinate and is not willing to surrender it, as aforesaid, until a decision has been rendered against him, he shall afterwards return double the amount to the party who hired or returned it to him, or to his heirs. Moreover, if any damage results to said property through his fault, he must pay it.

LAW XIX.

How Property Which Is Rented or Hired Can Be Sold to Another.

Where a man rents or leases a house or land for a certain time to another party, and the owner of the same sells it before the said term has expired, the purchaser has a right to eject from said property the tenant who rented it; but the vendor who leased it is bound to return him as much of the rent as would be due for the time during which he has a right to occupy said property. There are two instances, however, in which the tenant of rented property cannot be ejected, even if the property be sold. First, when he made an agreement with the purchaser that, when he sold the property, he could not eject the party who had rented it, until the term for which he had leased it had expired. Second, where the vendor leased the property to the tenant for his life, or gave him and his heirs a perpetual lease. In either of these instances he cannot dispose of the property in such a way as to eject the party who has hired or rented it, but we decree that the contract shall be observed.

LAW XX.

Where a Party Who Has Rented Property Retains Possession of It for Three or More Days After His Term Has Expired, He Is Bound to Pay the Rent for Another Year.

Where one man rents of another land yielding grain, grapes, fruit, or anything else of this kind, for the purpose of cultivating and gathering the products of the same, for a certain time, but after said term has expired he remains on said land for three or more days, and does not surrender it to the party to whom it belongs, it is understood that he leases it for the coming year; and he is bound to pay the same rent for it which he paid for anyone of the past years. But the case is not the same where the property is a house, tower, or other building, for then the party who leases said house is bound to pay for the extra time he occupies it as much as the rent amounts to for the time he held it or lived there, calculating the same in proportion of what he previously paid. And the reason for this difference in the rent of land and houses is, that where a party holds land for a longer period than he should, it may be at such a season of the year that the owner cannot afterwards find anyone to rent it, and therefore he might lose the rents and profits of it for that year, but this is not the case with houses, which a man can use or rent at all seasons of the year.

LAW XXI.

Where Lessors Interfere with Those Who Rent Lands or Other Property They Must Pay the Damages Incurred If They Do Not Protect Their Tenants, When They Are Able to Do So.

Where men have rented lands, vineyards or other property of this kind from others, and also rent houses or other edifices, it happens sometimes that obstacles are placed in their way so that they cannot use them or profit by them. Wherefore, we decree that if the owners of said property, or anyone else whom they can prevent, interfere in any way with those who have rented or have hired the same so that they cannot use it or profit by it, they must pay all damages and losses which result from said interference. In addition to this, they should pay an amount equal to the profits which might have been obtained from the property which the tenants had rented or hired, if they had not been interfered with. But where other parties, who are not the owners of said property, nor men who have any right to interfere with the control of the same, place any such obstacles in their way, and they have any lawful reason for doing so; as, for instance, such rights as the owners of said property, or those who hold the same as security, or have any other lien on it which enables them to do this, possess, we decree that where those who rented or hired said property were informed of it, they must pay to the others all damages and losses, together with the profits which they might have obtained from said property, as we stated in the case where they interfered with the same. But if, when they rented or hired said property, they were not aware that others had any rights in it, in this case they will not be bound to pay all this, but only so much as they have collected from the tenants as rent or hire, and where they have received nothing the others have no claim against them.

Where those who rented or hired the property have incurred expenses in building or repairs, which are such as increase its value, then those who interfered with them are bound to pay for the same, according to the estimate of the court.

What we have stated in this law is understood to apply to cases where the tenants acted in good faith when they leased the property, supposing that

those from whom they received it had the right to lease or hire it, for if they acted in bad faith, knowing that it belonged to someone else, they would then, in this case, have no claim against those from whom they rented it.

LAW XXII.

A Person Who Rents Property for the Sake of the Crops Is Not Bound to Pay the Rent Which He Promised to Pay for Them, If They Are Lost or Destroyed by Accident.

When the crops of any land, vineyard, or other property of this description which one man has rented from another, are destroyed or lost through any accident which occurs, and which is of an unusual character, as, for instance, through inundations or unusual rain or hail; or fire; or an enemy's army; or through the riots of other men who destroy them; or by the rays of the sun, or by a very hot wind; or by birds or locusts, or other insects which devour them; or by any other accident similar to these which destroys all the crops, we decree that the party who has rented the property shall not be bound to pay any part of the rent which he promised to pay, for it is only just that, as he loses his seed and his labor, the owner should lose the rent to which he is entitled. But where it happens that the crops are not entirely lost, and the farmer gathers a portion of them; he then has the choice to pay the entire rent to the owner of the property if he decides to do so, or if not, to deduct for himself the expenses which he incurred in cultivating the soil and deliver the balance to the owner of the property which he rented. But where the crop is lost through his fault, as, for instance, through improper cultivation of the soil, or through weeds and thorns which grow up in it, and the farmer gathers a portion of the spoiled crop, or where the crop is wasted by decay, or through the want of care of the lessor; then he who rented the property will be responsible, and will be bound to pay the rent as he promised to do.

LAW XXIII.

For What Reasons Tenants Are Bound to Pay the Rents, Although the Crop of the Property Leased May Be Destroyed by Accident.

Where the crop from land which is leased is destroyed by any accident, the party who promised to pay the rent to the owner will not be bound to do so, as we stated above. There are, however, instances in which this is not the case. First, when the party who received the property bound himself when the lease was drawn up, that no matter what happened and the crop was lost, that said loss should be his. Second, when he leases the property for the purpose of cultivating it for two or more years, and the crop is lost in one of those years through any of the accidents which we mentioned in the preceding law; and during the preceding or the following year, the tenant had gathered such a crop that, if it was well taken care of, would be sufficient to pay the rent as well as the expenses of the farmer for both years, in this instance he would be obliged to pay the rent; and although the owner of the property may have released him from the payment of the same for the year in which the crop was lost, if, during the succeeding year, he should gather such a crop that it will be sufficient for both years, as aforesaid, the landlord has a right to demand the rent for both. Moreover, we decree that where the land or property which is rented yielded so abundantly during one year that it amounts to more than twice what it ordinarily yields, one year with another, then the party who rented it should also pay double the rent, provided this abundance was the result of chance, and was not due to the dili-

gence of him who cultivated it with more labor than usual, or through improvements which he made in said property. For it is but just that, as the owner must bear the loss by any unforeseen accident, on the other hand, he should profit by any gain which takes place in regard to the property, for the same reason.

LAW XXIV.

The Landlord Must Reimburse the Tenant for Any Improvements Which the Latter Makes in Property That He Has Rented.

Tenants sometimes improve lands and other property which they rent, erecting buildings and other structures there and planting trees or vineyards, by reason of which the property commands more rent at the time when they leave it than when they took it; and, therefore it is just that, as when they cause any injury to rented property they are bound to make it good, so also any improvements they make in the same should be acknowledged and paid for.¹ Wherefore, we decree that the owner is bound to refund to the tenant the expenses which he incurred by said improvements, or to deduct the cost of the same from the rent; except where it was inserted in the lease that the tenant was to construct such buildings and make such improvements as those we mentioned above, at his own expense, for then he would be obliged to keep the contract as it was entered into.

LAW XXV.

Where One Man Rents Another a Warehouse for the Purpose of Storing Oil or Something of That Kind, He Is Not Bound to Pay Any Damage Which Happens to It.

Where one man rents another a warehouse for the purpose of storing oil or something of this kind therein, and when the latter rented it from him he did not promise him to take care of what he stored there, if the party who rented it suffers any loss, the owner, for that reason, will not be bound to pay him anything, except where he can prove that through his fault, or on account of some fraud which he committed, said property was lost. If, however, the owner of the warehouse placed there some man of his own, or some stranger, to take care of said property, he will then be obliged to bring him before the judge of the district, that he may be examined and it be learned from him how said loss occurred. But if, when the warehouse was rented to said party, the owner of the same took upon himself the protection of the property stored there, he will then be obliged to pay for whatever was lost, except where the loss occurred through some accident without the fault of the owner of the warehouse; as, for instance, by fire, or by the violence of thieves or enemies, or for some other cause of this kind.

LAW XXVI.

Inn-Keepers, and Keepers of Lodging Houses, and Sailors Are Obligated to Pay the Owners for Property of Which They Have Charge When It Is Lost in Their Houses or Their Ships.

It happens frequently that knights, merchants, or other men who travel, are compelled to lodge in the houses of inn-keepers and in taverns, and have

¹ This was "waste," a term of broad significance under the English law; for even substantial and valuable improvements, if unauthorized, came under that head. "If the tenant build a new house it is waste; and if he suffer it to be wasted, it is a new waste. If the house fall down by tempest, or be burnt by lightning, or prostrated by enemies or the like, without a default of the tenant, or was ruinous at his coming in and fall down, the tenant may build the same again with such materials as remain, and with other timber which he may take growing in the ground for his habitation, but he must not make the house larger than it was." (Coke. Inst. I-XII-67.)—Ed.

to entrust their property to the charge of those whom they find there, confiding in them without any witnesses, and without any other security; and also those who are forced to travel by sea place their property in ships in the same way, by trusting the sailors; and for the reason that it frequently happens that among these two kinds of men, some are found who are very dishonest, and are guilty of great injury and wickedness towards those who confide in them; hence it is but proper that their criminality should be restrained by punishment. Wherefore, we decree that all property deposited by travelers by land or water in the houses of inn-keepers or tavern-keepers, or in ships which traverse the sea or sail on rivers, said property being placed there with knowledge of the owners of the said inns, taverns, or ships, or parties representing them, shall be taken care of, so that it will not be lost or diminished in value; and if it should be lost through the negligence of said parties, or through any fraud committed by them, or by any fault of theirs, or if anyone accompanying said travelers should steal it, they shall then be obliged to pay the value of said loss or deterioration; for it is but just that since travelers entrust their persons and property to them that they should protect them faithfully, with all their power, so that they may not suffer either wrong or injury.

What we mention in this law is understood to apply to inn-keepers and tavern-keepers, and the owners of ships, who are accustomed to entertain men publicly, receiving from them pay or hire for their service. We decree that the aforesaid persons shall be bound to protect them in the same way if they entertain them through affection, and do not charge them anything, except in certain cases. First, where the party tells his guest before he receives him, that he will take good care of his property, but is not willing to bind himself to pay for it if it is lost. Second, where, before he received him, he shows him a chest or a house and says to him: "If you desire to remain here, put your property in this house or in this chest, here is the key of it, and take good care of your property." Third, where the property is lost through some unavoidable accident, as, for instance, by fire or inundation; or where a house is demolished; or where it is lost through a ship being damaged; or through the violence of public enemies; for where property is lost in any of the ways aforesaid, which did not happen through the fraud or fault of the parties, they will not then be bound to pay for the same.¹

LAW XXVII.

Keepers of Inns and Lodging Houses Should Receive Pilgrims and Protect Them and Their Property.

Like merchants and others who travel by sea or land with a view to pecuniary profits, so also pilgrims, and other religious travelers go on their pilgrimages with the intention of serving God, and obtaining pardon from their sins and Paradise. And since we spoke in the preceding laws of inn-keepers and sailors who receive in their houses, their inns, or their ships, knights, merchants, and other men who travel, and who should care for them so that they receive no injury while there; it is much more fitting that they should treat pilgrims in the same way who are traveling in the service of God. For this reason we deem it proper, and we order all keepers of lodging houses, and sailors in our dominions, to entertain pilgrims in their houses and their ships;

¹ The responsibility of an inn-keeper was early established under the English law. To render him liable, it was requisite that he should keep a public house and receive pay for entertaining guests. Even though insane, he was not excusable for negligence. "If an inn-keeper be so distempered that he is not of sound memory, and a guest knowing thereof inns there, where his goods are stole, an action upon the case lies upon the inn-keeper; for he cannot disable himself by saying he was not then of sound memory."

"If an host invites one to supper, and the night being far spent, invites him to stay all night; if he is after robb'd, yet shall not the host be charged, for this guest was no traveller." (Danvers, Abridg. of the Com. Law. Vol. I. p. 15. Tit. Actions.)—Ed.

and confer all benefits upon them which they can, and protect their persons and property from injury and from all wrong; and sell them everything of which they have need, by the same measures and weights, and for the same price that they sell these things to others who are residents in different parts in our dominions; and not to haggle with them in any way whatever. Those who violate this law shall be punished at the discretion of the judge of the district, according to the offence of which they are guilty, or the injury which they have committed.

LAW XXVIII.

Where Property Is Rented by Men for Quitrent, Who Should Be Responsible for the Damage to Said Property If It Is Lost, and How Said Quitrent Should Be Paid.

Contractus emphyteuticus, in Latin, means, in Castilian, a contract or agreement entered into with regard to immovables leased for a fixed quitrent, for the entire life of the party who received it, or of his heirs, or for each year as agreed upon; and a contract of this kind should be made with the consent of both parties, and committed to writing, for it will not be valid if made in any other way. All the agreements inserted in it and committed to writing, as aforesaid, should be observed. And for the reason that a contract of this kind resembles a lease more than any other, we describe it in this Title, and we decree that if the property thus leased for quitrent should be entirely lost by accident, as, for instance, by fire, earthquake, flood, or anything else of this kind, the owner of the same must be responsible for said loss, and not the party who rented it in this way, and that, from that time forward, he will not be bound to pay the owner any quitrent whatever; but where the property is not entirely lost by such an accident, and at least as much as the eighth part remains, the lessee will then be bound to pay the owner the quitrent for it every year, just as he promised to do. We also decree that where the property leased for quitrent belongs to a church or a religious order, and the party who occupies it retains the rent, or the quitrent for two years without paying it; or for three years, where he is a layman and does not belong to a religious order; from that time forward the owners of said property can take possession of it without any order of court. If, however, after the expiration of the terms aforesaid the parties are willing to pay the rent, without any suit, within ten days, the owner of said property should receive it, and in this case he ought not to take possession of the property; but if, at the expiration of either of said terms, the rent should not be paid, the owner has the right to take possession of the property, although neither he himself, nor anyone for him, may have demanded the rent. For it is understood that the agreement upon the day when the rent should be paid is equivalent to a demand by the owner of the same, and notifies the other party to pay it.

LAW XXIX.

Where a Party Who Holds Property Under Quitrent Is Obligated to Dispose of It, He Should Sell It to the Owner in Preference to Someone Else, When He Is Willing to Give As Much for It As Any Other Man Will Do.

The party who holds property under quitrent, can alienate or sell the lease. Before he sells it, however, he should notify the owner that he desires to dispose of it, and what price is offered for it, and if the owner desires to give as much for it as the other party, he should then sell it to him in prefer-

ence to the latter. But where the owner says he is not willing to give as much, or is silent for the space of two months, not stating whether he is willing to do so or not; from that time forth the lessee can sell it to anyone he wishes, and the party who leased it to him for quitrent cannot prevent his doing so. He should, however, sell it to some man from whom the owner can collect the quitrent as easily as he can from him.

Moreover, we decree that the party who holds property under quitrent, can give it as security to such a man as above-mentioned, without the knowledge of the owner, and then, when he transfers it, the owner of the property is bound to accept the party to whom it is sold, and to grant it to him, drawing up for that purpose a new lease. In consideration of said grant and renewal of the contract, he should not take from him more than a fifth part of the price for which it was sold, or of its estimated value if one has been made; but he has no right to sell it or give it as security to other persons from whom the quitrent cannot be so easily collected; as, for instance, to a religious order, or to another man more powerful than himself; for under such circumstances the sale will not be valid, and the party will, for this reason, lose the rights which he had in said property.

TITLE IX.

Concerning Ships and the Salvage of the Same.

Men hire ships of many kinds to transport their merchandise from one place to another, and for the reason that they are sometimes wrecked or lost on account of a tempest or some other accident, and a dispute subsequently arises between the merchants, the masters, and the sailors on account of the salvage; therefore, since in the preceding Title we treated separately of Leases and rents, we desire to speak here of Ships which, after they have been hired, run risks at sea. We shall show what shipmasters and sailors are bound to observe and do for the merchants who confide in them; and we shall afterwards explain how the loss shall be divided among all of them, when it happens that the property of any is thrown into the sea on account of a storm; and, above all, we shall speak of the abandonment of ships, and of their salvage, and of everything relating to these two matters.

LAW I.

What Ship-Masters and Sailors Are Obligated to Observe and Do for Merchants and Others Who Confide in Them.

The chief men by whose orders ships are controlled are called pilots, captains, and masters. It is their especial duty, before the ships sail, to see that they are caulked, thoroughly prepared and well protected, and abundantly furnished with everything necessary for them; as, for instance, sails, masts, ropes, yards, anchors, oars, and everything else belonging to ships as is proper, and each one has need of them. In addition to this, they should take with them experienced men to assist them in steering, directing, and controlling the ships, so that if they are not hindered by tempests or storms, they may proceed directly to those ports or places where they wish to go, and in such a way that the merchants or other men who hire them may not run any risk of being lost themselves or of losing their property, through the fault of those who have control of the vessels. We also decree that they should take a notary with them who knows how to write and read well, and said notary should write down in a memorandum book all the articles which each person takes and places in said ships, both their number and their character. A memorandum book of this kind is of great importance with respect to matters which are recorded in it, for it should be believed just as a document drawn up by the hand of the notary public. Moreover, said captains and their sailors are obliged to furnish their ships with arms, biscuits, and everything else necessary for food, and fresh water. They should also notify the merchants and other men whom they are to take with them in their ships, that they may provide the water and food which they need, and such as are able to bear them, or have them, should also take arms to protect themselves from corsairs and other enemies, if this should be necessary.

LAW II.

Agreements Which Merchants Make with the Masters of Ships Should Be Observed, and What Authority Said Masters Have Over the Other Men Who Accompany Them.

Masters and owners of ships make contracts and agreements with merchants and other men whom they transport in them, and when they do this, we decree that they shall both be bound to observe them in every respect. And although, after they have embarked and left port, someone of those pres-

ent may happen to commit a crime for which he deserves to be put to death, or to undergo some other penalty in person or property, neither the master nor the owner of the ship should condemn him to death or to the loss of limb, or to the forfeiture of any of his property; but they can arrest him, or secure him in such a way that he cannot inflict any other injury or wrong upon any one else; and when they arrive at the port where they are to discharge their cargo, they should bring him before the judge who has jurisdiction there, and inform him of the offence which he committed. The judge should then hear the defendant and those who complain of him, and having heard the arguments of both parties, and the evidence introduced to prove the offence for which the culprit was arrested, he should sentence him to the punishment which he thinks he deserves, or discharge him if he thinks he is not to blame. Masters and owners of ships, however, have a right to scourge their sailors and their servants for faults which they commit, always being careful not to kill or maim them.

LAW III.

How the Loss of Merchandise Thrown into the Sea, on Account of a Storm, Should Be Apportioned.

Those who travel by sea are at times exposed to great dangers, so that, on account of storms arising from the bad weather which they experience, or through fear of danger and loss, they are compelled to throw into the sea a great portion of the property which they have in the ships, in order that the latter may be lightened, and that they may avoid death; and because an act of this kind is performed for the common good of all those on board, we consider it proper and we order, that all merchants and others who transport any property in a ship, and who have to cast it away in this manner, must contribute to the payment of those who own the property thrown into the sea for this reason, each of them giving his share, according as the property remaining in the ship was worth more or less than what was thrown overboard. And although some one may be taking with him precious stones, or gold, or ready money, or any other property whatsoever, he must pay for the same in proportion to what it amounts to or is worth, and he cannot avoid this by saying that it is something of very little weight, for at a time like this, property should not be estimated or appraised by its weight and lightness, but according to its value; and for the reason that only the merchandise and property remaining in the ships is saved, on account of what was thrown overboard, as we have mentioned, but also for this reason the ships themselves escape, because if they had not been lightened they might have been lost.

Therefore we consider it proper and we order, that the owners of ships be required to place a value upon the ship or other vessel from which the property was thrown overboard, and the merchandise and other property remaining in the ship having been appraised, as we have stated, all the persons together should apportion among themselves the loss of the property thrown overboard, and each of them should pay the share which he is assessed to those who are entitled to it; each one of them, moreover, giving as much as his property was worth, which was lost by being thrown overboard; and where it happens that the merchants have slaves, they shall be bound to estimate their value, and to pay for each one of them as well as for the other property remaining in the ship. Where there happen to be freemen on the ship who have nothing with them but their persons, no matter who they may be, they are not obliged to contribute anything, by reason of their persons, on account of the property thrown overboard, for a freeman cannot be, and should not be appraised as other things are.

LAW IV.**Merchants Should Share with One Another the Loss of the Mast When It Is Cut Down to Avoid the Effects of a Storm.**

Where a strong wind arises and causes a storm at sea, so that those in charge of a ship fear they may be lost, and, with the intention of avoiding this, cut down the mast of the ship, or intentionally throw away the yard, and it falls into the sea and is lost; the merchants and other persons in the ship will be obliged to divide the loss among them, and to make it all up together to the owner of the ship; just as we stated in the preceding law that they should pay for whatever is thrown overboard, with the intention of lightening the vessel. But if it happens that the master of the ship did not intentionally order the mast, sail, or yard to be cut away, or be thrown down, but that the wind broke it, or a thunderbolt from the skies did so; or if it is lost for any other reason like this through accident, then neither the merchants nor the other persons in the ship will be obliged to pay anything for it, even though their property remains safe and is not lost; for since they pay the hire of the ship, a loss happening in this way must be borne by the owner of the same, and not by other persons.

LAW V.**For What Reasons Merchants Are Not Bound to Distribute Among Themselves the Loss of a Ship, When It Is Wrecked on a Rock or on Land, and When They Cannot Avoid Doing This.**

When a ship is traversing the sea in a storm, and it accidentally strikes on a rock or on land, if it is wrecked or run on shore, although the merchants may remove their goods in safety they will not be required to pay for the ship; but if it happened that, before the ship was lost, as above-mentioned, the merchants, through fear that their property would be lost, directed the owner of said ship to let it go ashore, at the hazard of what God might wish to do, saying that if the ship should happen to be wrecked, they will agree to bear their share of the loss, and will assist him in recovering it, if they should escape and should save anything of what they had in the ship with which they could do this; and the owner of the ship permits it then to run on shore, at their request or by their order, and the ship is wrecked; they should appraise the value of the ship, and estimate what each one of them saved from it out of his own property, and the owner of said ship and all the others should share the loss between them, each of them paying more or less, in proportion to the quantity which each one saved or recovered; and those who did not save anything should not pay anything, and if all is lost, the owner of the ship will have no claim against the merchants on this account.

LAW VI.**How the Loss of Property Thrown Overboard Should Be Apportioned, Although the Ship May Accidentally Be Lost Afterwards.**

Where persons traveling by sea encounter a tempest, and being apprehensive of danger, are compelled to throw overboard some of the property which they are transporting in the ship, for the purpose of lightening it; and after this the ship should happen to be accidentally wrecked by striking on a rock, or on land, or in any other way, so that the property transported in it falls into the sea; if any of the property which thus falls overboard can be recovered, the owners of the same are bound to assist the others in bearing

the loss incurred by reason of said property being thrown overboard, which was done for the common benefit of all; both the property which they saved and that of the others which was thrown overboard having been appraised, and the value of both being considered, they should share the loss together. If, however, those who throw their property into the sea to lighten the ship, as aforesaid, should afterwards recover any of said property which they cast away, they will not be obliged to give any portion of it to the other parties who lost their own property on account of an accidental misfortune.

LAW VII.

Property Found on the Seashore, Whether It Be Parts of a Ship or What Has Been Thrown Overboard, Should Be Returned to the Owners.

The fear of death impels merchants and other men to throw their merchandise into the sea in a storm, with the intention of lightening the ship in order that they may avoid being wrecked; and for this reason we consider it proper and order, that no matter who finds property of this kind, which has been thrown overboard in this way, he shall be bound to restore it to the owners of the same, or to their heirs. We decree that the same rule shall be observed where a ship happens to be wrecked by a storm, or in any other way, so that whatever is found remaining of it, or of the property on board, no matter who finds it, shall belong to the parties who lost it; and we forbid any man to prevent their taking possession of the same, although he may have a special grant, or it may be a general custom that any such property which is unexpectedly brought to any port, belonging to such a person, or found near any castle, or on the seashore, shall belong to the owner of the latter; nor shall this be the case for any other reason whatsoever; for we do not consider it just that property which men lose by accident or misfortune of this kind, should be taken by anyone, either on account of a custom, or by reason of some special grant which he may possess; except where said property belongs to the enemies of the king or the kingdom, for in this case no matter who finds it it shall be his.¹

¹ This indemnification of a party for preserving the property of another by the sacrifice of all or a portion of his own, is borrowed from the *Lex Rhodia de jactu* of the Civil Law; "*Si levandae navis gratia iactus mercium factus est, omnium contributione sarcitur, quod pro omnibus datum est.*" (Corp. Jur. Civ. Dig. XIV-II-1.) It was the duty of the master of the ship to compel those who had profited by the damage sustained by others under such circumstances, to contribute their proportion of the loss, or, where all had suffered, to see that an equitable apportionment of the same was made. If he refused or neglected to do this an action could be brought against him.

Roman maritime jurisprudence did not consider property thrown overboard from a ship as abandoned, but only as relinquished for the time being under the force of necessity, the abandonment not being absolutely voluntary; and whoever subsequently appropriated it, could not acquire any title to the same unless where no claimant appeared after a reasonable time, and due publication of notice had been given. Where such property was seized as wreckage, the offender could be prosecuted for theft. (Corp. Jur. Civ. Dig. XLVII-IX-3.) The vessel, as well as whatever was saved from its cargo, still belonged to the owners. "*Si quando naufragio navis expulso fuerit ad littus, vel si quando aliquam terram attigerit, ad dominos pertineat.*" (Corp. Jur. Civ. Cod. XI-V-1.)

The Commercial Code of Spain defines at great length and with extreme minuteness the duties and responsibilities of the captains of merchant vessels, and especially with reference to the owners of the cargoes entrusted to their care, in this respect going far beyond the regulations of antiquity, whose maritime laws had, nevertheless, attained a high state of development.

The rules governing the apportionment of salvage in case of injury or shipwreck correspond, in the main, with those of the *Partidas*, many of which have been adopted by all civilized nations. Loss and damage to both ship and freight must be borne by the owners in proportion to their interest and the value and condition of the property saved. "*Las pérdidas y desmejoras que sufran el buque y su cargamento á consecuencia de naufragio ó encalladura, serán individualmente de cuenta de los dueños perteneciéndoles en la misma proporción los restos que se salven.*" (Código de Comercio. III-IV-4. Art. 840.) This general principle applies, also, to articles thrown overboard in case of a storm. By the French Code, before this can be done, the owner, or his agent, must be consulted, and, if a difference of opinion exists, that of the ship's officers must prevail. The apportionment of loss is based upon the value of the property abandoned and saved, and that of half the ship and the freight at the port where the balance of the cargo is discharged. (Code de Commerce I-XII-Art. 410-417.) The Italian maritime law on these points is similar to the French and Spanish. Under its provisions the personal effects of the crew and passengers, if saved, are not subject to contribution, but, if lost or damaged, the owners can have them included in the general apportionment and reparation *pro rata*, for which the vessel and remainder of the cargo are liable. (Código di Commercio. II-VII-1. Art. 648.)

The common law of England never recognized the prescriptive right claimed as legal by the nations of northern Europe, and so congenial to the original predatory instincts of humanity, by which the con-

LAW VIII.

How the Loss of Merchandise Placed in Boats for the Sake of Emptying and Lightening Ships, at the Entrance of Ports, Should Be Apportioned.

Where ships are lying at the entrance of ports or at the mouths of rivers, and their masters are apprehensive because they are heavily laden, and said entrances are dry or narrow, and for this reason some of said merchandise is removed from the ships and placed in boats or other small vessels, in order that it may be transported with less danger; we decree that where any such property placed in the boats is lost through the wreck of the latter, or on account of any other accident, the loss shall be apportioned between all the merchants whose property remains safely in the ship; just as we stated in the preceding laws in the case of property knowingly thrown into the sea with the intention of lightening the ship, and of weathering a storm. If, however, after this the ship should be wrecked and the property in it lost, and the other property placed in the boats with the intention of lightening the ship, as aforesaid, is saved, those to whom the property belonged, which was saved, are not obliged to give any portion of it to the others who lost theirs in the ship, because the loss happened accidentally, and not on account of anything which was done for the benefit of all in common.

LAW IX.

Ship-Masters Are Bound to Pay Merchants for the Injury They Sustain Through Their Fault.

It happens that ships are sometimes lost through the fault of their masters, or commanders. This may happen when they go to sea at a season unsuitable for navigation. The time not fitted for this is from the eleventh day of the month of November until the tenth day of March. And this is the case because, during this interval, the nights are long and the winds very violent, and the sea is agitated by the power of winter, and severe storms take place frequently at this season, and those who go to sea are exposed to many great dangers. Wherefore, any master or captain of a ship who sets sail during the season aforesaid, contrary to the wishes of the merchants, or of other men whose property is transported in the ship and it happens to be lost; the said master will be greatly at fault, and will be obliged to make good all damages and losses which said merchants suffer by reason of the wreck. We decree that the same rule shall apply where the master of a ship is aware that he must pass by a place which is dangerous on account of the enemy, or for some other reason, and does not notify the merchants of the fact. The same rule shall apply where the ship is committed to the care of men who do not know what to do, for he will be bound to make good the loss which they sustained on account of either of the reasons aforesaid.

tents of vessels cast upon the shore by a tempest could be appropriated by whoever found them. This, however, brought little consolation to the unfortunate proprietor, for the sheriff was commanded to seize all such articles as being abandoned, and therefore the property of the crown. This prerogative has long since been abrogated by statute, and plunder of a wrecked ship or its cargo is now a felony by the laws of both Great Britain and the United States.

The *Lex Rhodia de jactu* is still in force in the Sahara desert, where losses sustained by the owners of camels and the merchants composing the caravans are mutually adjusted according to the same rules which governed the maritime transportation of the Romans in the Mediterranean.—Ed.

LAW X.**What Penalty Sailors Deserve Who Knowingly Cause Ships to Be Wrecked, Through the Desire to Obtain the Property Transported by Them.**

Men who have the control and command of ships, are sometimes guilty of great fraud and treachery, so that when they perceive that those whom they have as passengers are taking great wealth with them, knowingly conduct them through dangerous places in order that the ships may be lost, and they may have an opportunity to steal or seize a portion of the freight. For this reason we decree that any master who has been proved to have committed such a serious offence shall be put to death on this account; and that the judge before whom this is proved must cause the damages and losses sustained by said parties to be paid out of the property of the master who was guilty of the crime. We deem it proper that said parties shall be believed under oath with regard to said injuries and losses, the judge making an estimate of them in the first place, after due consideration.

LAW XI.**Concerning Fishermen Who Make Signals by Fire at Night, for the Purpose of Causing Shipwrecks.**

Fishermen and others of those who are accustomed to fish and to be near the seashore, secretly make signals by fire at night in dangerous places, to persons at sea, causing them to think that there is a port there; or they do this with the intention of deceiving them so that they may approach the light, or their ships strike upon a rock or on some dangerous place and be wrecked, in order that they may steal and seize some of their freight; and for the reason that we consider that such persons commit a very great wrong where a ship happens to be wrecked on account of a deception of this kind, and said deception can be proved, as well as who those were who committed it; we order that they shall pay four times the value of whatever they stole or seized of the property contained in the ship, if an action at law is brought against them; and if no action should be brought within a year, that afterwards they shall pay an amount equal to what they took, and where they did not happen to steal anything, but the property was lost, they must pay the value of what was lost and damaged on this account. And, in addition to this, we order that the judge of the district before whom this was proved, shall inflict such corporeal punishment upon them as he thinks they deserve, on account of the wickedness and fraud of which they were guilty.

LAW XII.**How Injury From Corsairs Sustained By Those Who Go to Sea Should Be Apportioned.**

Where predatory corsairs, who infest the sea, take a ship with the men and property in it, and afterwards an agreement is made between them by means of which they, their ships, and their property are released; whatever is paid in a case of this kind should be divided among all, each paying his share according to the amount of property he has with him, in proportion to its value, whether it be more or less. Where one has nothing with him but his own person he should pay something for it, whatever is proper, for he makes no small gain who escapes with his body from the power of an enemy; but where it happens that the latter does not gain possession of the entire vessel, or take it, but only steals some property from it, and not everything, those who owned said property must lose it, and they cannot, and should not claim anything on this account from the others whose property remained in the ship.

LAW XIII.**For What Reasons Merchants Can Recover Property Taken From Them
By Corsairs If It Is Afterwards Found, and for
What Reasons They Cannot.**

Corsairs sometimes plunder and take the ships of merchants and the property transported in them, and before they leave the sea or arrive with them at a place where they can deposit it in safety, they meet with other Christians who deprive them of their booty; and for the reason that a dispute may arise between the parties robbed by the enemy and those who afterwards took their booty from them, as to whom the latter shall belong, we desire to explain in this law in what way a controversy of this kind should be decided. We decree that if the merchants were going to, or coming from, a Christian country, and are conveying food or anything else there, the ships, as well as the men, and all that they are transporting with them, shall be restored to the possession of the former owners from whom they were taken and stolen by the enemy. We establish this regulation because the country profits generally by merchandise transported by traders. But where traders were conveying merchandise to the country of an enemy with whom no truce existed, and were doing this without our order, and were captured and liberated, as aforesaid; whoever robbed their enemies or took their property from them is entitled to the same, excepting the persons of the Christians, who should remain free and at their own disposal.

We decree that the same rule shall be observed with respect to small vessels in which men go to sea, not for the purpose of transporting merchandise but for pleasure and enjoyment; and that whoever liberates them from their enemies, who have taken them captive, shall have their property. For those who go to sea in time of war, not for purposes of gain or to make war against the enemy, but foolishly, and without any benefit to their country, must endure any injury which happens to them, which was due to their own fault.

LAW XIV.**Judges Appointed With Jurisdiction Over the Seashore, Should
Decide, Simply and Without any Pleadings, Cases
Arising Among Merchants.**

Judges are usually appointed in courts and other places along the seashore, before whom persons from ships appear in cases involving shipwreck, or goods which have been thrown into the sea, or any other property whatsoever; and for this reason we decree that magistrates of this kind must be careful to hear and decide plainly and without any libels, in the best way and as soon as possible, and with no delay or prolongation of the time—on account of which the parties may lose their property, or their voyage, by reason of dilatory proceedings—through endeavoring to ascertain the truth in doubtful cases, which come before them in suits concerning the masters and owners of ships, or other reliable men who happen to be there, in order that they may be more certainly and better informed. They must, moreover, examine the log of the ship, which should be believed with respect to the matters written therein, as we stated in the first law of this Title. And when

all this has been considered in the manner aforesaid, the judge shall decide said disputes, and render his decision in the way he thinks he should do.¹

¹The institution of maritime courts is of great antiquity. While no data are in existence which enables us to positively determine whether the Phoenicians or their colonies had formulated and adopted rules governing the relations of maritime and other traders with their customers and the masters of vessels, it is highly probable that a nation so devoted to commerce, and which conducted it with such ability and success possessed a code of laws enforced by suitable tribunals and magistrates, and established for the settlement of the perplexing questions which must inevitably have arisen in the prosecution of a traffic that extended to the limits of the then known world.

The people of Rhodes, so far as can be ascertained from history, were the founders of the ancient and modern systems of commercial law nearly a thousand years before Christ. The Greeks, who had inherited from the Phoenicians their love of, and genius for, maritime trade, preserved the Code of the Rhodians and transmitted it to Rome; where, however, the traditions of both the Republic and the Empire discouraged commercial pursuits, as being beneath the dignity of a state whose greatness was largely due to military prowess and foreign conquest. The Athenians had a tribunal which took special cognizance of matters pertaining to commerce and navigation, to which reference is occasionally made by classic writers.

The Visigothic legislators, recognizing the fact that this branch of jurisprudence was a part of the law of nations, deprived their own courts of jurisdiction in cases where disputes arose between foreign merchants, and prescribed that they should be determined by the laws of their respective countries. "*Quum transmarini negotiatores inter se causam habent, nullus de sedibus nostris eos audire preassumat, nisi tantummodo suis legibus audiantur apud telonarios suos.*" (For. Jud. XI-III-2.)

The Roman *praetor* exercised both civil and criminal jurisdiction over all questions in which the interpretation of contracts, the ownership of property, and navigation with its inevitable incidents of shipwreck, loss of goods, and salvage, were involved. His duties and powers and the general principles of maritime jurisprudence by which he was required to be governed in his decisions, are concisely and admirably set forth in the Digest of Justinian. (Corp. Jur. Civ. Dig. XLVII-IX.)

No code of law, definitely and purposely compiled and adopted for the settlement of nautical questions has ever been promulgated by the legislative power of England. The basis of the statutory enactments on this subject, as well as that of all those upon which the various collections determining the rules of commercial jurisprudence long established in continental countries rest, are the doctrines and precepts which, founded upon the principles of justice and confirmed by the experience of centuries, have descended to us from antiquity.

Although the Court of Admiralty was established as early as the reign of Edward III, the venerable treatises above referred to were not prominently brought to the notice of the English tribunals as the original sources of maritime law until the middle of the eighteenth century. Aside from the fragmentary remains of the Rhodian Code, and the somewhat contradictory legislation scattered through the titles of the civil law, the most authoritative and comprehensive regulations relating to this important subject are to be found in the *Partidas*.—Ed.

TITLE X.

Concerning Partnerships Made by Merchants and Other Men with One Another for the Purpose of More Easily Securing Profit by Uniting Their Capital.

Merchants and other men form associations with one another in order the better to profit by a union of their capital, and for the reason that it sometimes happens that parties are taken into partnership because they are intelligent and experienced in buying and purchasing, though they have no property with which to do this; and also because others who have property are wanting in knowledge of the business; and because there are also others still who have both property and knowledge, but are unwilling to employ them themselves; therefore, since in the preceding Titles we spoke of Rents and ships, and the wreck of the latter, we desire here to speak of the Partnerships which men form with one another in one of the ways above mentioned. We shall also show what a partnership is; in what way it is beneficial; how it should be formed, who can form it, and with regard to what property; how many kinds of partnership there are; what contracts relating to a partnership are valid and which are not for what reasons a partnership is terminated; and in what way partners should share the profits which they make, or the losses incurred by them by reason of the partnership.

LAW I.

What a Partnership Is, in What Respect It Is Beneficial, How It Should Be Formed, and Who Can Enter Into It.

A partnership is the association of two or more men formed with the intention of common profit by the union of all parties. Great advantages arise from it when it is formed between good and faithful men, for they aid one another as if they were brothers. A partnership is instituted by the agreement and consent of those who desire to be partners, and it can be formed for a specified time, or for the entire life of the partners. Where, however, persons form a partnership both for themselves and for their heirs, it will be valid during their lifetime, but will not pass to their heirs, except where it relates to a lease of property belonging to the king or to some Council.

Every man can form a partnership with others who has not lost his mind, or is under fourteen years of age. If, however, anyone who is under twenty-five years of age thinks that he is suffering injury through a partnership, or that he was induced to enter it fraudulently; he can petition the judge of the district to remove him from it, and cause him to be placed in the same condition in which he formerly was, without any loss to himself, and the judge should do so.¹

¹ The civil law, from which this is evidently taken, is somewhat more explicit. "*Societas coiri potest vel in perpetuum, id est, dum vivunt, vel ad tempus, vel ex tempore, vel sub conditione.*" (Corp. Jur. Civ. Dig. XVII-II-1.) While minors who had guardians were not prohibited from entering into a partnership, no contracts which they made without the consent of the latter were binding upon them, although the obligation assumed by the other party to the agreement could be enforced. "*Si quid dari sibi stipulentur, non est necessaria tutoris auctoritas namque placuit meliorem quidem suam conditionem licere eis facere, etiam sine tutoris auctoritate, deteriores vero non aliter, quam cum tutoris auctoritate.*" (Corp. Jur. Civ. Inst. I, XXI.) By the Visigothic Code, a minor over fourteen years of age could act for himself under all circumstances, and hence was at liberty to be a partner in any business enterprise. (For Jud. II-V-10.) Mohammedan law does not permit a minor to become a partner. "A contract of reciprocity is not lawful between a slave and a freeman or between an infant and an adult, because equality does not exist in those instances." (The Hedaya, II-XIV.) No one who had not attained his legal majority, could engage in a partnership under the Gentoo Code. (Gentoo Cod. VI-1.)

Infants, under the common law, were not forbidden to become partners in any transaction or occupation, upon the presumption that such an agreement might result to their advantage, and they were not bound by such an obligation unless this was evidently the case. An injurious agreement was absolutely void; one to which an element of doubt attached could be avoided as soon as the infant reached maturity, if he chose to exercise that privilege, otherwise it was considered valid if he did not repudiate it within a reasonable time after attaining his majority. This rule, as is well understood, applies to all contracts entered into by minors independently of their guardians, as well as to those made by other infants without the sanction of legal authority.—Ed.

LAW II.**For What Reasons a Partnership Can Be Formed.**

A partnership can be formed for the transaction of any proper and lawful business, as, for instance, to buy and sell, exchange, rent, and hire, and for all other business of this description by means of which men are accustomed to profit justly. But partnerships cannot, and should not be entered into in any improper matters; as, for instance, for purposes of theft, or robbery, or murder, or usury, or to do anything else of this kind, which is wicked, improper, and contrary to good custom. A partnership instituted for purposes of this kind shall not be valid, and one of the partners cannot claim anything from the other by reason of said partnership.

LAW III.**In How Many Ways a Partnership Can Be Formed.**

A partnership can be formed in two ways: first, when it is done as follows, namely; where all the property which partners have when they enter into partnerships, as well as that to be subsequently obtained, is in common, and the profits are to be shared and the losses borne equally by all. The second is, when the partnership is formed for the special transaction of one kind of business; as, for instance, for the purpose of selling wine, cloth, or something of this description. All contracts which are proper and lawful, entered into by the partners with one another in each of these two kinds of partnerships, are valid, and should be observed in the manner in which they are executed. If no agreement is made with respect to the profits and losses, and the way in which they are to be apportioned among the partners, they should in this case be divided equally. Where an agreement is made with respect to the profits, establishing how much each partner should have and no mention is made of losses, it is understood that each shall bear the same portion of the losses as he is entitled to have out of the profits. We decree that the same rule shall apply where an agreement is made with respect to losses, and no mention is made of the profits.

LAW IV.**What Agreements Entered Into by Partners with One Another Relating to Profits Are Valid.**

It sometimes happens that, where partners who form a partnership for the purpose of profit, one of them is more familiar than the other in the business or matter which they are to transact, and with regard to which the partnership was formed, or that he exerts himself more, or exposes himself to a greater risk. For this reason, when they agree with one another that a party of this kind, who is more competent or performs more labor than the other, shall have the greater share of the profits; or where they enter into a contract that in case any of the property of the partnership is lost, he shall not bear any portion of said losses; agreements of this description and others like them are valid, and should be observed according to the terms in which they are drawn up; but where one is made by which one party shall have all the profits, and shall not bear any portion of the loss, or where he is to bear all the loss and have no share of the profits, a contract entered into in this way shall not be valid. A partnership of this kind is called "leonine" by the laws.

LAW V.**What Contracts Made By Partners With One Another Are Not Valid.**

Where a man fraudulently endeavors to form a partnership with another and the partnership is confirmed by an agreement, as soon as the other party learns of the fraud he is not bound to keep said agreement. Moreover, we decree that when two men form a partnership together, one of them stating to the other that although he may commit some fraud against him while they are partners, he will not sue him for it; and agreement of this kind shall not be valid, and should not be observed; for contracts which give an opportunity to men to commit fraud, shall be void.

We also decree that if any persons make an agreement in their partnership as follows, namely; that one of them shall have as much of the profits, or bear as much of the losses as some other party whom they mention shall determine, and the party whom they designate for this purpose apportions their share properly and justly, they must abide by his decision; but where he makes an improper apportionment, as, for instance, where he directs a greater share of the profits or of the losses to be taken or be given to one than the other, not assigning any lawful reason for doing so, his decision will not be valid; but we decree that it shall be corrected by the decision of reliable men, who must consider whether one of said partners deserves a larger share for being more intelligent or for performing more labor, as we stated in the preceding law. And if this is found to be the case, they should give him said larger share in the proportion which they think is proper, and if not, they should direct that the profits be equally divided.

LAW VI.**The Property and the Profits of Partners Should Be in Common, When the Partnership Is Formed to Include All Property Which They Have Then or Expect to Have.**

When a partnership is organized under an agreement that all the property in the possession of the partners at that time, or which they will obtain thereafter, shall be united and be in common with all; we decree that, from the day on which said contract is signed, all the profits and the property which they have, or which they may acquire in any way whatsoever, shall be held in common by them, even though it should be *castrense vel quasi castrense peculium*. Moreover, we decree that each of the partners can use said property, and bring an action with regard to it, just as he can with his own. Where, however, any of the partners exercise authority or jurisdiction over any castle or district, or is entitled to receive anything from his debtors, the other parties can lay no claim to it, nor make use of the jurisdiction over said territory, unless the other party has especially granted them power to do so.

LAW VII.**In What Way the Profits and Losses of Partners Should Be Divided When the Partnership Is Formed to Carry on Some Particular Business.**

Where men simply enter into a partnership by stating: "We are partners;" not mentioning or indicating that they form said partnership for the general transaction of all their business, as we stated in the preceding law; in this case it is understood that all the profits gained in the trade or occupation which they are carrying on should be equally divided among them. Moreover, we decree that where a partnership is formed for the transaction

of some particular business, as, for instance, to sell wines, cloth, or something of this kind, the profits obtained during the duration of said partnership should be divided among them in the way they agreed upon when the contract by which said partnership was formed was entered into. But the other profits made in some other way should not be divided among them, but should be the private property of the person who obtains them.

We also decree that all damages and losses sustained by said partners shall be borne in common by them, each one bearing his share in proportion to the amount of the profits; except where said deterioration and loss, arise from the fault or fraud of one of the partners, for, in this case, he only, and not the others, shall be responsible for them. If, however, the party through whose guilt said deterioration or loss resulted can prove that he took the same care of said property as he would have done of his own, then, for a fault of this kind, he will not be obliged to make good the loss, but we decree that each one of them shall bear his share of it.

LAW VIII.

A Party Who Obtains Profits From a Wicked Source Is Not Obligated to Give a Share of Them to His Partners.

Where partners obtain any profits by means of theft, robbery, cheating, or in any other wicked manner like this; the others should receive no part of it, and if the party who obtains any profits in this way happens to bring them to be divided with the other partners, and they receive a portion of the same; and the party who obtained them is afterwards defeated in court and compelled to return said property to those to whom it belongs; each one of said partners is bound to give up the share which he was allotted of said gains, although he was not aware, at the time he received it, that it had been obtained from an evil source. But we decree that if the partners knew, when they received their shares of said profits, that they were wrongfully obtained, and although the party who obtained them in this way did not give his full share to each one of them; nevertheless, each of said partners will be obliged to pay, in proportion to the share which the other received, out of the property of the partnership as much as said party is compelled to pay on this account, just as if they had all received their full shares; and the party who obtained said illegal gain shall not be required to pay a larger portion than any of the others. This is the case because by accepting their shares, they consented to and confirmed the wrong which the other party committed.

LAW IX.

Which Contracts Made by Partners With One Another With Regard to Property Which They Expect to Inherit Are Valid and Which Are Not.

When a partnership is entered into or formed under an agreement that property which the parties think may be inherited from some person who is especially mentioned, shall be owned jointly by them all when any of them inherits it through being appointed an heir, or in any other way; we decree that a contract of this kind shall not be valid because the person to whom the property belongs is designated, (except where this is done with his consent and he remains of the same mind until his death); for the reason that it might happen that some of said partners may compass the death of a party of this kind, through a desire of dividing his property among themselves; therefore, we forbid that a contract from which a serious wrong like this may arise shall be valid. When the agreement establishing the partnership is

drawn up, it should be done in the following manner, namely: by stating that all profits obtained by way of expected inheritance (but not mentioning the party), or secured from any other source, shall belong in common to all; in this case the contract will be valid, and each one of the partners will be entitled to his share of said property.

LAW X.

For What Reasons a Partnership May Be Dissolved, After It Has Been Formed.

A partnership is dissolved in many ways, and, in the first place, by the natural death of one of the partners, for although there may be several of the latter, the partnership is dissolved by the death of one of them, except where, when it was formed, they made an agreement with one another that although one of them might die, the others would remain in the partnership. We also decree that where one of the partners is banished for life to some island, the partnership is dissolved for this reason, because banishment of this kind is called, in Latin, civil death; and this is not unreasonable, since the party can never leave the place to which he is banished, and therefore loses all his property.

We also decree that a partnership is dissolved where any of the partners is oppressed with many debts, and for this reason is compelled to abandon all his property to those to whom the latter is encumbered.

We also decree that a partnership is dissolved where the property on account of which it was formed dies, or is lost in any other way and that the same rule shall apply where the condition of the property with regard to which the partnership was formed is changed. This would be the case if the property is of such a nature that men can make use of it, and it afterwards becomes sacred; as, for instance, a dwelling house which is turned into a church, or where it was a square and is made a cemetery, or for any other reason of this kind.

LAW XI.

A Man Can Leave a Partnership When He Is Not Pleased with His Partners.

A partnership remains good as long as every one of the partners is willing to remain in it; but where any one of them is discontented he can leave it, if he desires to do so, by speaking to his partners as follows: "Up to this time I was pleased to belong to a partnership with you, but I am unwilling to be your partner hereafter;" and the others cannot prevent him from doing this. Where, however, a party of this kind leaves the partnership before the purpose for which it was formed has been accomplished, or before the time for which it was to last is terminated, he will then be bound to indemnify the other partners for all damages and losses which they may suffer on this account; except where at the time when they formed the partnership, they agreed with one another that if any one of their number was not pleased with the partnership, he could leave it whenever he chose, before the expiration of the time aforesaid, or afterwards.

LAW XII.

How the Gain or Loss Should Be Apportioned Among Partners, Where One of Them Leaves the Partnership for His Own Advantage and to the Loss of His Fellow-Partners.

Where a partnership has been arranged or formed between certain men, under an agreement that all profits from the day when they formed said partnership shall belong to all of them in common; and after this, any one of them

knowing that he might elsewhere secure some great advantage, as, for instance, if he learns that some person had appointed him his heir, or intends to do so; or where he expects to derive the benefit from any other course; and, on account of this, fraudulently abandons his fellow-partners in order to secure all of said benefit, and causes the others to lose the share in it to which they are entitled, and this can be proved he is bound to give to each of said partners his share, although he may have already left the partnership.

We also decree that if, from the day when he left the partnership, as stated, any property should be lost or deteriorate, that said loss or deterioration shall be borne by him alone and not by the others; and whatever profits the other partners obtain after he left the partnership shall entirely belong to them, and they shall not give him any portion of it whatever, on account of the fraud which he perpetrated against them; for it is but just that anyone who desires to cause his partners to lose anything by fraud, should bear the whole loss.

LAW XIII.

In What Way the Profits or Losses Should Be Apportioned Among Partners, When the Partnership Is Dissolved for Any Lawful Reason.

When a partnership is dissolved for any of the reasons which we stated in the preceding law, as soon as this is done, all the profits and losses should be apportioned among the partners in the manner agreed upon by them when the partnership was formed. Where any loss has taken place in the partnership through fraud committed by any of the partners, the one who committed the fraud must bear the entire loss, and cannot avoid making reparation for it; although he may say that he obtained other profits elsewhere, which were of such a value and nature as to exceed the amount of said loss, except where one or more of the others has committed another fraud of the same kind; for in this case we decree that the loss should be apportioned among those who committed the fraud, so that no part of it may be borne by those not implicated.

LAW XIV.

For What Reasons One Partner Can Leave the Other Before the Time of the Partnership Has Elapsed.

A partnership can be dissolved before the time of its duration has elapsed for four reasons. First, when one of the partners is so intractable, or so ill-disposed, or has other habits of this kind that are of such a character that the other partners cannot endure him, or live with him in an amicable manner. Second, where the king or the council of some city or town, dispatches one of the partners on a mission; or appoints him to some office; or orders him to perform some service, or to do something which is for the benefit of the king, or the council of that place. Third, when the condition or contract, on account of which the partnership was especially formed, is not complied with in the case of one of the partners. Fourth, when the business for which the partnership was organized is so interfered with that it cannot be transacted. This would be the case where a ship on which the partners were to go to sea was wrecked, or so damaged that they could not make use of it; or where they appoint one of their number to transact business in some country, town, or house, or to perform some act for which he was selected, and they wish afterwards to remove him from said place, and send someone else in his stead or make a change in the position to which they had appointed him; or do something else of this kind.

LAW XV.**Where a Party Who Has Possession of the Property of the Partnership Is Reduced to Poverty, What the Other Partners Can Demand of Him.**

Where there are several partners, as, for instance, three or more, and one of them has charge of the property of the partnership, and he gives part of said goods to one or two, without the knowledge or direction of the others or of any of them; and the partner who had charge of said property should afterwards be reduced to poverty, so that he has nothing left out of which to give their shares to the others, or to any one of them without whose knowledge he gave the same away; we decree that in this case whatever the parties received shall be restored to the partnership, and be divided a second time among all the partners. If however, the partner or partners who did not receive their shares of the property were aware that the one who had charge or control of the same, had given a portion of it to the others; and for a certain time should be guilty of negligence and not demand his or their share, and the other partner who had possession of said property should be reduced to poverty; in this case they cannot make a demand upon the other to return what they have received, for the reason that they were at fault in not demanding their shares at a time when they could have recovered them.

We also decree that where one partner acknowledged to another a debt which he owes him on account of the partnership, or where he loses a suit in court brought for said debt, the partnership enjoys such a privilege or exemption that, where the debt is so great that if the party pays it all he will become for that reason so poor that he will have nothing to live upon, a decision shall not be rendered against him requiring him to pay the whole amount; but we decree that the judge of the district, in his discretion, may order him to pay only so much of it that he will have enough left to subsist upon, and the party to whom the debt is due cannot compel him to pay more than this. The judge, however, can take security from him, that if he subsequently earns enough to pay the balance, he will be obliged to do so. This is understood to apply where the party who owes the debt has no trade by which he can support himself; for, where this is the case, he will be bound to pay the entire amount if he has the means to do so, and he should work at his trade in order to live.

LAW XVI.**How Expenses and Debts Incurred by One of the Partners for the Benefit of the Partnership Should Be Recovered.**

Where one of the partners incurs any expense for the benefit or advantage of the partnership, or, while he is traveling in the service of the same is seized with illness and is compelled to incur expenses in order to be cured; as, for instance, to pay a physician for medicines purchased; the party who incurs expenses of this kind, or others of the same nature, has a right to deduct them from the funds of the partnership. We also decree that where, for the benefit of the partnership, a tax is hastily assessed, and he promises to pay it shortly, he can use the partnership property before it is divided. But if the debt was contracted under some condition, and he has a longer time in which to pay it, we decree that the property held in common shall be brought into the presence of the partners, and divided among them, but the said partner should take security from each one of the others to pay his share of said debt at the time when he himself agreed to pay it.

LAW XVII.

Partners Who appropriate Property Belonging to the Partnership Are Bound to Return the Same to the Other Partners or to Their Heirs.

Some partners at times appropriate property belonging to the partnership without the knowledge of the other partners, and, although they take it in this way the others must not think that they steal it, for no man ought to suspect that anyone would wish to steal property in which he has a share. For this reason we decree that whatever one of the partners takes in this way from the others cannot be demanded of him as stolen property, except where the evidence against him is so strong that they are compelled to believe that he took said property with the intention of stealing it.

We also decree that where one partner is obliged to pay or return a debt, or some property to another, and dies before doing so, his heir is bound to pay it, or return what he owed him. The same rule applies where the party who was entitled to receive the property dies, and his partner is obliged to give it to his heirs; for although the heir cannot come into the partnership in the place of the partner who died, nevertheless, in cases of this kind, or where a claim arising from the partnership is made by one partner against another, the heir, instead of the party who owned the property which he inherited, is bound to answer, and to pay it to the living partner, or his heirs or receive the same, if due from him or them.¹

¹The greater part of the rules laid down in the text are accepted as binding by the courts of all civilized nations today. The division of partnerships into three different kinds, universal, general, and limited is identical in both the civil and the common law, this classification unquestionably having been derived from the Digest. "*Societates contrahuntur sive universorum bonorum, sive negotiationis alicuius, sive vectigalis, sive etiam rei unius.*" (Corp. Jur. Civ. Dig. XVII-II-5.) The causes of dissolution, as given by Justinian, are not so numerous as those prescribed by the Common Law, or enumerated in the statute books of modern legislation, a fact due to the wider scope and greater exigencies of commercial intercourse, and the increased responsibilities of the parties resulting therefrom. "*Dissociamur renunciatione, morte, capitis minutione et egestate.*" (Corp. Jur. Civ. XVII-II-4.)

The Codes of the Latin races divided partnership into general and special. The French law requires written articles where the object of the partnership is greater in value than 150 francs. By the laws of all these nations any partner can bind the partnership, except where one or more of his associates opposes his act before it has become operative with reference to outside parties. A partnership where no definite agreement is made with respect to its duration, is presumed to be formed for the life of the partners.

Under Moslem law, each member of the firm has practically absolute and independent control of the business, without being required to consult the others. "Partnership by reciprocity is an universal partnership in all transactions, where each partner reciprocally commits the business of the partnership to the other, without limitation or restriction." (The Hedaya, XIV.) In a contract of this kind equality in the capital invested is indispensable, and the parties to it must also be of the same religious belief. As under our procedure, a partnership is valid when entered into either with, or without an agreement in writing.

In all countries the mutual responsibility of partners is evidently based upon the doctrine of agency, the community of ownership, and the requirements of trade, which demand the unrestricted exercise of equal powers by the members of such associations, and the greatest possible degree of protection for those with whom their transactions are conducted.—Ed.

TITLE XI.

Concerning Promises and Agreements Made by Men With One Another, With a View to the Performance of Certain Acts, or to Observe and Comply With Certain Matters.

Men make promises to, and agreements with one another with a view to the performance of certain acts, or to observe and comply with certain matters, which are a different kind of contracts from those we explained in the preceding Title; and for the reason that they are concerning things which in the beginning are done with the consent of both parties, yet afterwards disputes and suits arise among men with regard to them, we desire here to speak of said promises. We shall explain what a promise is; how it is advantageous; in what way, and between what persons it is made; how many kinds of promises there are, and concerning what things they can be made; what contracts or agreements should be observed, and which ones should not although they may have been entered into and confirmed; and what penalty those who do not observe them are liable to.

LAW I.

What a Promise Is, in What Way It Is Advantageous, and How It Is Made.

A promise is the consent verbally given by some men to others with the intention of binding themselves when they come to an agreement with regard to some certain thing, which some of them should give to or do for the others; and when this is done justly and reasonably it is a great benefit to the people, for men make one another assured that they will do what they agree to, and they are bound to keep their promises. A promise is made in the following manner, namely; where both parties who desire to make a contract of this kind are present, and one of them says to the other: "Do you promise to give me such-and-such a thing, or render me such-and-such a service?" (mentioning it specifically); and the other party answers that he does promise, or that he consents to do so, and where one answers in these words, or in others like them, he is, for that reason, obliged and bound to comply with what he consented to do, or promised to give or to perform; and although the parties who enter into a contract of this kind may not both speak the same language, as, for instance, where one speaks Latin and the other Arabic, the promise will be valid, provided only that they both understand the question and the answer.¹ We decree that the same rule shall apply where each speaks a different language, although they do not understand one another, and both parties being present agree to the contract, through an interpreter, for then the promise will be valid, just as if those who made the contract understood one another.

LAW II.

A Promise Should Be Made by Words and Not by Signs.

The question and answer in a promise must be made verbally and with an understanding of the obligation, and when this is done no other words should be spoken. When one party asks the question the other should answer

¹ The Spanish, French, and Italian Codes, also, do not recognize the validity of contracts made without consideration. "*Los contratos sin causa, o con causa ilícita, no producen efecto alguno.*" (Cód. Civ. de Esp. IV-II-2, Art. 1275.) (Cód. Civ. de Fr. III-III-4, Art. 1131.) (Cód. Civ. d' It. III-IV-2, Art. 1119.) In some instances, under the civil law, a sale without any remuneration, especially where delivery of the article was made, had the same effect as a gift, and was so considered. The rule that defect of consideration cannot be set up against the claim of a third party to the prejudice of his rights, adopted by Anglo-Saxon jurisprudence, and applicable to all cases of contracts of every description where an innocent third person may suffer through want of notice, is also accepted by the tribunals of France, Spain, and Italy. (Cód. Civ. de Fr. III-III-6, Art. 1165.) (Cód. Civ. de Esp. IV-I-3, Art. 1124-1295.) (Cód. Civ. d' It. III-IV-3, Art. 1130.) By the Italian Code a consideration is always presumed, unless the contrary is established. "*La causa si presume sino a che non si prova il contrario.*" (Cód. Civ. d' It. III-IV-2, Art. 1121.)—Ed.

whether he gives his consent or not; and where a promise is made in the following manner by one of the parties saying: "Do you promise to give me such-and-such a thing, or to perform such-and-such a service for me?" (stating it); and the other party answers: "Why not?" he is just as much bound as if he did promise. But where the party to whom the question is put answers: "It will take place, or it will be done," we decree that, in this instance, he will not be bound by such words.

Moreover, we decree that where a party is asked a question and returns no answer, but nods his head or makes some other sign, not saying, Yes or No, or uttering any other word; in this case he will not be bound, for an obligation of this kind assumed by speech cannot be contracted by signs. Wherefore, we decree that persons who are dumb or deaf cannot bind themselves or make a contract of this description, for those who are dumb can neither put questions nor answer them, and those who are deaf cannot hear the questions put to them, although they can make other contracts which are entered into by consent.

LAW III.

For What Reasons a Promise Is Valid, Although the Parties Who Make a Contract of This Kind Are Not Present.

Where one man desires to bind himself to another to pay the debt of a third party, or sends him word that he will do so; or makes a promise in a letter signed by him, or through a certain messenger of his that he binds himself to pay a debt which So-and-So owes him, mentioning him by name; although an obligation of this kind will not be valid if he should make it with reference to a debt of his own when the party who makes the promise and the one who receives are not present; it, nevertheless, will be valid when it is made with regard to a debt of a third party, whatever it may be.

We also decree that where a man owes another a certain sum of maravedis, which he is obliged to pay him on a certain day, and, when the time comes when it should be paid, he sends word to him and tells him by letter that he cannot pay him the said maravedis at that time, but that he will pay them to him in some place which he designates, and on some other day which he names, an obligation of this kind is valid, for the reason that it is made with reference to an old debt. And whatever words he uses in his message, whether by writing or by messenger, by which it can be understood that he agrees to pay the old debt, whether it be that of some other party or his own, it will be valid, and the party will be bound to comply with the message which he sent. If, however, it cannot be absolutely understood by the words stated in the letter, or spoken by the messenger, as aforesaid, that the party binds himself to pay said debt, he will not then be compelled to pay it; and this would be the case where he sent word, as follows: "Such-and-such a debt which So-and-So owes you will be paid you, or you shall have security for it, or you shall have it soon;" or other indefinite words of this kind by which he does not state that he will pay it.

We also decree that where any person admits that he owes an old debt in any of the ways we have mentioned above, by saying and promising that he, or some other party (mentioning him by name), will pay said debt at such-and-such a time, we decree that if the party whom he mentions gives his consent to what is promised, both of them must pay an equal amount of said debt. Where the other party refuses, stating that he will not pay anything, the party who made the promise will, nevertheless, be obliged to pay half of said debt. But when a party admits that he is a debtor, and says that either he, or some one else whom he mentions by name, will pay the debt, then, if the other party does not consent to what the former promised, he himself will be bound by said promise to pay the whole of said debt.

LAW IV.

Between What Persons a Contract Based Upon a Promise Can Be Made.

Every man, who is not especially forbidden to do so, can make a promise to another, and for the reason that it may be positively ascertained who those persons are who are forbidden, we wish to enumerate them here. We declare that they are the following, to-wit: a person who is insane or has lost his mind; anyone who is under seven years of age, who is called in Latin *infans*; a ward under fourteen years of age and over seven, for a person of this kind cannot make a promise which may be to his injury. If, however, by reason of a promise made by a ward he obtains any advantage, said promise will be valid so far as it contributes to his benefit, and he will be bound to that extent, and no more. What we have stated with reference to a ward, applies also to any one over fourteen years of age and under twenty-five, who has a guardian; for a promise made by a party of this kind without the consent of his guardian will not be valid, except in the way we stated above concerning a ward.

LAW V.

Persons Who Waste Their Property, and Minors Under the Care of Others, Cannot Make a Promise to Their Injury.

Prodigus, in Latin, means, in Castilian, a person who wastes his property, and we decree that where a guardian has been appointed for a person of this kind on this account, whether said guardian be a near relative of his or someone else; and the said party has been forbidden by the judge of the district to make use of his property without the permission of said guardian; any promise which he may afterwards make will not be valid, and he will not be bound by it, except in the manner which we mentioned in the preceding law in the case of a ward.

We also decree that where anyone over fourteen years of age and under twenty-five, who has no guardian, makes a promise binding himself in any way to some other party, said promise shall be valid; but if he finds he has been deceived, or that he made such a promise to his injury, he can petition the judge of the district, by way of restitution, to release him from said promise, and to place him in the same condition in which he was before he made it. If the judge finds that this is true; that the party is under twenty-five years of age; and that the promise was made to his injury; he should set the same aside by ordering that said obligation shall not be valid.

LAW VI.

A Promise Which May Be Enforced by Compulsion Cannot Be Made Between Father and Son, or Master and Slave.

A promise cannot be made by a father who has a son under his control, or by such a son to his father, in order to bind one another, except with regard to property from earned profits, called, in Latin, *castrense vel quasi castrense peculium*; as stated in the Title concerning the authority which fathers have over their children. We also decree that neither a master can make a promise of this kind to his slave nor a slave to his master, in such a way that compulsion can be used to enforce said promise; and even though a promise of this kind may be made it will not be valid, except where the slave promises a certain amount of maravedis in consideration of his emancipating him, and after he has emancipated him he refuses to pay him; for in this case the slave will be bound by a promise of this kind, and will be required to comply with it.

LAW VII.**A Man Cannot Receive a Promise From Another in the Name of a Person Who Has No Control Over Him.**

A man cannot receive the promise of another in the name of a third party who has no control over him. This would be the case where one person says to another: "Do you promise me to give to So-and-So such-and-such a thing?" and the other answers: "I promise." Neither promissor nor beneficiary will be bound by it, and should not be forced to comply therewith. But where the party who made the promise says: "I promise to give you, or So-and-So, such-and-such a thing;" and if the party who makes such a promise of his own accord, and not under any compulsion, desires to comply with it by giving the third party what he promised to give him; from that time forth he cannot claim what he gave him, nor will the other party be bound to return it to him. The party who received the promise can, however, use compulsion against him, by suing him in court, to force him to return what he received by his order; but anyone who is under the control of another, as, for instance, a son in the name of his father, or a slave in the name of his master, or a monk in the name of his superior, can receive the promise of another party; and the promise which any one of the persons aforesaid receives in the name of the party under whose control he is will be valid; and he in whose name said promise was made can sue the person who made it just as if he, himself, had received it. We also decree that judges and clerks of councils, who keep their records, can receive a promise made in the name of another party. This would be the case where they receive it in the name of some minor, his guardian promising that he will faithfully protect the person of said minor and his property; also where such a promise is received in court by one party in the name of another with reference to some suit between them; or where it is received by one party accepting a truce in the name of another, or in any other agreement such as these. For although none of the persons aforesaid, in whose name said promise was received, may have been present when this was done, the promise will be valid, and the party in whose name it was made has the right to bring suit for its performance, just as if he himself had received it; for the reason that the parties in whose names the promises are accepted, are, as it were, in the power, and under the care of officials of this kind; and, moreover, because such officials are public servants in the council in the place where they live, on account of the duties pertaining to their offices which they have to perform.

LAW VIII.**What Persons Can Receive a Promise for Others.**

An attorney of the king, or of the council of any city or town, or of any country, or the guardian of a minor, or anyone appointed the guardian of an insane person, or of any person who has lost his mind, can each of them receive a promise in the name of the party whose attorney or guardian he is. A promise of this kind is valid, and suit can be brought for its enforcement as well by the person in whose name it was received, as by the attorney or guardian who received it in the name of the former. But where the attorney of any other man whosoever, who is not one of the parties aforesaid, receives the promise from another person in the name of the party whose attorney he is, although said promise will be valid, the party in whose name it was made cannot demand that what has been promised shall be given to him or done for

him, until the attorney who received it in his behalf gives him authority to make the demand. If the attorney should not be willing to grant authority to the party in whose name it was made to demand the fulfillment of the promise, the judge of the district should deliver to him, out of the property of said attorney, as much as what was contained in the promise was worth or amounts to; and if he is so poor that he has not anything to give, as aforesaid, then the party in whose name the promise was made can make the demand just as if he himself had received the promise.

LAW IX.

Principals Can Demand What Was Promised to Their Agents.

There are certain things which are contained in the promises received by the agents of parties, which those in whose name they are made have the right to demand, although their agents who received them from them may not grant them authority to do this. This would be the case where an agent received a promise, and the party in whose name it was made was present, or, if he was not present, where the promise was made concerning some property which belonged to the party for whom he acted as agent; as, for instance, where this was done concerning the rent of certain of his houses, or lands, or some other property like this; or where the attorney received it in court, in the course of some case which he was arguing, or which he was prosecuting or defending for said party.

LAW X.

How the Enforcement of a Promise Made with Another, Without a Power of Attorney, Can Be Secured.

Where one man owes another a debt of money or of property, and the debtor receives a promise from a third party, in the name of the person whose debtor he is, by his saying, "Do you promise to pay to So-and-So so many maravedis, or to give him such-and-such property which I owe him?" and the other party answers that he does; he becomes for that reason obliged and bound to fulfill the promise. The party who receives said promise can compel him to fulfill it, although the other party in whose name he received it cannot force him, or sue him to make him comply with said promise. Not only is he required to do this, but also to pay all damages and losses which the party incurred by reason of his non-compliance.

LAW XI.

No Man Can Promise That an Act Shall Be Performed by Another Party.

No one can promise another the performance of an act by a third party, and this would be the case where some one says: "I promise that So-and-So shall give you so many maravedis, or perform for you such-and-such a service;" or something else of this kind; for a promise like this, if made out of court, is not valid, except where the party promises that his heirs will do or give something, for in this case it will be valid. Where, however, the party makes a promise as follows, namely: "I promise you to bring it about or to act in such a way that So-and-So will give you, or do for you such-and-such a thing;" we decree that a promise of this kind shall be valid, for the reason that he not only promises that an act of someone else will be performed, but that he himself will do something. For this reason if the other does not comply with his promise, he himself will be compelled to do so or to pay the other party all losses and damages incurred on this account. But when the promise relating

to the act of another party is made in court, as, for instance, where any one says: "I promise you that I will make So-and-So do what is right, or that he will accept your judgment in this case; or that he will take care of, or return in good condition the property of So-and-So, a minor;" in this instance a promise made in this way, under any of these circumstances or under others like them, will be valid as against the person who made said promise, although it was made with reference to the act of a third party.

LAW XII.

How Many Kinds of Promises There Are.

There are three kinds of promises which are valid; first, when one person promises another to give him something or perform some service for him, without stating any condition or appointing any day for compliance with what he agreed to do, and this promise is called, in Latin, *pura*. Second, when a promise is made to be fulfilled on a certain day, which is called, in Latin, *promissio in diem*; and a promise of this kind may also be carried out upon a day which is not especially designated, although this may be done in several ways. This would be the case where the party who makes the promise says: "I promise you that my heirs shall give you something, or perform some service for you, the day I die." And although this day was not especially designated at the time the promise was made, the heirs will be bound by such a promise made by said party and will be required to comply with it.

We also decree that one man can promise another to give him something or perform some service for him, before he dies, within a certain number of days or afterwards, as if he should say: "I promise to give something or to perform some service within ten days before I die, or afterwards." The heirs of said party will also be obliged to comply with a promise of this kind, except where the party promised to perform the service with his own hands and not through any one else; for, in this instance, the promise will not be valid if the party dies without complying with it.

The third kind of valid promise is, where one man promises another to give him something, or to perform some service for him under a condition, and this is called in Latin *promissio conditionalis*, and it is made in the following way, namely, by the party saying: "I promise So-and-So to give such-and-such a thing, or to perform such-and-such a service, if such-and-such a ship should come from Morocco to Seville;" or in other terms of this kind under which the condition may, or may not be complied with. We also decree that this conditional promise may be made in another way, as where the party who makes it says: "I promise to give such-and-such a thing or to perform such-and-such a service, if So-and-So has been made pope;" or under other circumstances like this, where the act relates to, or has been performed in time past. This condition is not of the same nature as that which refers to time to come, because with respect to that which relates to past time the party who makes the promise does not certainly know whether what he promises under a condition has taken place or not, and as soon as he makes said promise he is bound by it if it has occurred, and if not, he is released. This is not so in the other instances, because he cannot be bound by, or released from his promise until what he indicated has taken place; if it has transpired he then becomes bound, but if the condition is not complied with then his promise will not be valid.

LAW XIII.**Within What Time a Promise Must Be Complied With.**

Where one man binds himself to give something to, or to do something for; another in the first of the three ways we mentioned in the preceding law, which is called a "pure promise;" although a certain day or place has not been appointed for its fulfillment, such a promise will be valid. The judge of the district should determine, according to his discretion, what time will be reasonable within which the party who bound himself should comply with his promise; and if he thinks that so much time has already elapsed since the promise was made that the party could have complied with it if he had wished to do so, he should at once compel him to comply with it within a specified period, by designating a certain day which he considers reasonable, by which day the party must do what he promised.

Where one man promises another to give him something, or to perform some service for him at a certain place, not indicating the day on which he will do this; and the party who made said promise maliciously absents himself to avoid complying with it; we decree that if such a time has already passed, during which he could have gone to said place and fulfilled his promise if he had wished to do so, the judge of the district must compel him to comply with his contract there, although he may not be found in the place where he had promised to do this; and not only is he bound to comply with what he promised to do, but we also decree that he shall pay in addition, all damages and losses which the other party sustained, on account of his not doing what he agreed to, in the place aforesaid. If, however, the party to whom the promise was made voluntarily accepts from the other what he promised to give or to do, and then does not demand of him reparation for the said damages and losses, nor any penalty which was agreed upon, and does not mention any of these things; he cannot afterwards bring suit for them, although the payment was not made where it was promised.¹

LAW XIV.**Property Which Has Been Promised Cannot Be Demanded Before the Appointed Time, Until the Condition Upon Which Its Delivery Depends Has Been Complied With.**

Where one man promises another to give him something or to perform some service for him upon a certain day or under some condition, the party is not bound to keep his promise until said day arrives, or the condition under which the promise was made has been complied with. If either of the parties should die before the condition is complied with, or before the day arrives when the promise should be carried out, the heirs of the deceased party are bound in the same way to do what was promised, although the condition may have been complied with, or the day have arrived, after the death of either of the parties.

¹ While, according to our laws, where a definite date is fixed for the performance of a contract, the party making the promise is ordinarily obliged to comply with it; yet, regardless of the time, the intention of those interested, and their understanding of the circumstances under which the agreement was entered into, must always be taken into consideration. The question of acceptance, either express or implied, referred to, but not explicitly stated as necessary, in the text, is a material, and often vital point in the determination of such matters when a dispute arises.—Ed.

LAW XV.**How a Promise, Which Has Been Given for the Purpose of Giving or Paying Something Certain on the Kalends of Each Year, Should Be Carried Out.**

The first day of every month is called the Kalends, and for the reason that it sometimes happens that one man promises another to give him something, or do something for him on the Kalends, without indicating which one; in a case of this kind we decree that the promise shall be fulfilled on the first Kalends coming after the day on which the party entered into the obligation. We also decree that where one man promises another to give him so many maravedis, or to perform such-and-such a service for him every year, not designating what time of the year, it is understood that a promise of this kind should be fulfilled at the end of every year. But where the promise is made, by the party saying that he will give him, or do for him whatever is the subject of the promise every year of his life, then it is understood that the party should comply with what he promised at the beginning of every year.

We also decree that when one man promises another to give him something or to perform some service for him, not indicating the time or the day, and binding himself, if he does not do this, to pay so many maravedis or give such-and-such property as a penalty; in this case it should be understood that said penalty can be demanded whenever the party who made the promise could have given or done what he promised, and refused to do so, suit having been brought against him in court; but where the condition is inserted in the contract before the promise, as follows, namely: "If I do not give such-and-such a thing, or perform such-and-such a service for you, I promise to pay you so many maravedis;" it is understood that a condition of this kind can extend to the day of the death of the party who made the promise, or until such a time as the property promised is not produced, on account of death or because it has been destroyed or lost, and from that day forth the said penalty can be demanded.

LAW XVI.**When a Promise Made Under a Condition Should Be Complied With.**

We stated at the end of the preceding law, that when a condition is inserted in a contract before the promise of the payment of the penalty, the time of said condition can be extended for the entire life of the party who makes the promise. There are instances, however, in which this is not the case; first, where the promise is made to two men concerning one thing, to each one separately in the same way, as if one should say to the other: "If I do not give So-and-So my vineyard I promise to give it to you;" and he should also say to the other party afterwards: "If I do not give So-and-So my vineyard I promise to give it to you;" and either of said parties brings suit against him for the property he promised, he must give it to him; and although the other party may desire to bring an action against him for said property, he who promised it in this way is not bound to answer, but we decree that he shall, by all means, give it to the party who in the first place brought suit against him for it by complaint and answer. The second case is, where one man becomes surety to another, by saying: "If So-and-So does not pay you so many maravedis, I promise to pay them to you;" for if the party who received the promise brings suit against the debtor for the payment of said maravedis, and he refuses to pay them, from that time forth the surety will be liable, by reason of the promise which he made, and he must pay them

at once. The third case is, where someone says in his will: "If my heir does not give So-and-So such-and-such a tract of land of mine, or such-and-such a piece of property, I direct that he pay him so-many maravedis or give him such-and-such a thing;" and if the heir, after the death of the party who makes the will, was able to give said property and did not do so, the other party can, any time afterwards, bring suit in court to compel him to give it, or to pay the penalty mentioned in the will with reference to the same. The fourth case is, where a man says in his will: "If So-and-So, my slave, does not go to such-and-such a place, or does not do such-and-such a thing, I direct that he be free;" as soon as said slave could have done what was forbidden him, and did not do it, he becomes free.

LAW XVII.

Concerning a Promise Made Under a Condition and to Be Performed on a Certain Day.

When a man promises another to give him something, or to do something for him on a specified day, under a certain condition, although the condition may have been complied with, the party who made the promise is nevertheless not bound to carry it out, until the designated day arrives on which he should do so. We also decree that where any one imposes a condition at the time when he makes a promise to another, either to give him something or to do something for him, and the condition is of such a character that it cannot possibly happen according to the course of nature; as soon as a promise of this kind is made, the party who makes it becomes bound by it. This would be the case where he says: "If you do not touch heaven with your finger, I promise to give you such-and-such a thing, or perform such-and-such a service for you;" for, as it is absolutely certain that no man can do this according to the course of nature, the party who makes the promise is bound by it for this reason. We decree that the same rule shall apply to promises similar to these which men make under any condition whatever.

LAW XVIII.

Where the Property Which One Man Promises to Give to Another Dies, or Is Depreciated in Value, He Is Not Bound to Pay for It.

Where one man promises another to give him some particular piece of property, or to perform some service for him on a certain day, and the property dies a natural death before said day, without the fault of the party who makes the promise, he is not bound to pay for it, or to give anything else in its stead, but if it dies after the day when it should have been delivered, he will then be bound to pay its estimated value. And if the day is not specifically stated, when the said property which one party promises to give to another is to be delivered, and the other party to whom it was promised, afterwards requests him to give it, and he having the power, is unwilling to do so; we decree that if the property should subsequently die a natural death, he shall be bound to pay for the same. If, however, it should die before the other party demands it of him, he who promised it will not be bound to pay him anything for it.

LAW XIX.

Where a Party Who Promises Anything Kills It, He Is Obligated to Pay For the Same.

Where one man promises to give another something, and after this kills it he is bound to pay for it, except where he does this for a lawful reason. This would be the case where the particular thing which he promised to give was a

slave, and he should afterwards find him with his wife or with his daughter, or where he ascertains that he had committed some other offence like this for which he had a lawful right to kill him; under such circumstances he will not be bound to pay anything for said slave.

LAW XX.

Concerning What Property a Promise Can Be Made.

Any kind of property which is under the control of men, and which they are accustomed to transfer to one another, can be promised. This applies to things which are not yet in existence, as, for instance, the fruits of a vineyard, an orchard, or a field, or the offspring of a female slave, the increase of beasts, or anything else of this description. For although none of the aforesaid things may be in existence when a promise is made concerning them, the promise is valid because it is possible they will come into existence, and the party is bound to carry out his promise, as soon as the fruit is ripe, or the offspring of said slave is in a condition to be given. If, however, no fruit or no offspring should be yielded by the property indicated, with reference to which the promise was made, the party will not then be bound to comply with the same, except where he is guilty of some malicious act to prevent its coming into existence; for in this case he will be bound to pay for it on account of the fraud which he committed.

LAW XXI.

Concerning What Property a Promise Cannot Be Made.

Men make promises to one another which are not valid. This is the case where one man promises another to give him something or do something for him, which never has existed, does not exist now, nor ever will exist. Moreover, we decree that where one man promises another to give him something or to perform some act which, according to the laws of nature cannot take place, and cannot be accomplished by human agency, as, for instance, if he should say: "I will give you the sun or the moon, or I will give you a mountain of gold;" neither a promise of this kind, nor any like it, will be valid. We also decree that where one man promises another to give him some particular thing, as, for instance, a horse, or some animal of this kind, which was already dead when he made the promise; we decree that a promise of this kind shall not be valid, and that the party shall not be bound to give said property or any other in its stead.

LAW XXII.

Sacred and Holy Property Cannot Be Promised, Nor Can a Christian Bind Himself by a Promise to a Man of Another Religious Faith.

No man can promise to give to another, property which is either sacred, holy, or religious, nor can he give a freeman to be a slave. A promise made with regard to any of these matters, or any others like them will not be valid. We also decree that if any of the things aforesaid should, after they have been promised, be placed in such a condition that a promise can be made in regard to them a second time; as, for instance, where said property becomes secular by coming under control of laymen, or a freeman becomes a slave through some accident; said promise will nevertheless, not be valid, since at the time it was made the property was of such a character that no promise concerning it could be made.

We also decree that no Christian can promise a Jew, a Moor, or any other man who does not acknowledge our religion, that he will place another Christian in his power as a slave; for a promise made under such circumstances, with or without a penalty, will not be valid; but where a Jew or a Moor promises to give to a Christian another Christian who is a slave, or binds himself under a penalty to do this, this promise will be valid, and he will be bound to comply with it.

LAW XXIII.

When a Man Has Two Slaves of the Same Name, and Promises to Give One of Them, He Has the Choice to Give Whichever One He Pleases.

Two or more slaves belonging to one master sometimes bear the same name, and their owner may promise some person to give him one of them, mentioning him by name, and not designating him by his physical characteristics, nor by any trade, if he has one; and when a promise of this kind has been made, the party who made it has the choice of giving whichever one of those bearing the same name that he pleases. The same rule applies where one man promises another, by saying: "I will give you such-and-such a thing, or such-and-such another thing;" for he has the choice to give him whichever one of these he pleases, so long as they are living, but if one of them dies he is bound to give him the one that survives.

LAW XXIV.

Concerning Promises Which Men Make Regarding Several Things Together or Separately.

The two letters *O* (or) *E* (and) make a great difference in agreements, and promises which are made, for the letter *O* divides and separates things which are promised; and this is the case where the party who makes a promise says to the other to whom it is made: "I promise to give you a horse or a mule;" for then he is bound to give him one of them, whichever he pleases, and no more. The same rule applies to other promises made in this way, with reference to anything. The other letter which is called *E*, joins together the property mentioned in the promise. This would be the case where one man says to another: "Do you promise to give a horse and a mule?" If the other should say simply, "I promise," the entire promise will be valid; but if he answers that he will give only one, his promise will be valid only with respect to the one he agreed to give and not to the other.

LAW XXV.

Concerning Property Which Is Promised to Be Given or Paid in One of Several Towns Which Have the Same Name.

Some towns have the same name as others, for which reason we decree that where one man promises to give another some property on a certain day at a specified place, designating it, and there is another town or village which has the same name as the one he mentioned; as, for instance, Cartagena in Spain, while there is another in Africa; or Carmona which is in Spain, while there is another in Lombardy; and it happens that the parties misunderstood one another, one of them thinking that the promise was to be fulfilled in one place, and the other thinking that it was to be done in another; and the town which is the more distant is so remote from the place where the promise was made that the party who made said promise cannot reach it on the day on

which he should comply with the same; it is understood that he should do so in the town which is near him. And if no day is mentioned on which the promise is to be complied with, it is understood that this should be done in the town which is situated in the kingdom where the promise was made.

LAW XXVI.

The Question and Answer Relating to a Promise Made Concerning Property Should Agree.

The answer should correspond with the question when it is put, so that the party who makes the promise may answer in the same way in which he is interrogated, for under other circumstances the answer will not be valid. This would be the case if anyone should say: "Do you promise to give me such-and-such property, or to do such-and-such a thing for me;" and the other answers conditionally: "I promise to do so if such-and-such a thing takes place;" for a promise made in this manner will not be valid unless the party who put the question admits at once that he is content with the answer of the other. The reason why a promise of this kind is not valid is that the answer should be made in the same way and with reference to the same matters to which the question relates, and not in some other way, or with regard to other things. But if the party who wishes to receive the promise questions the other with regard to a certain amount of maravedis, as, for instance, if he should say: "Do you promise to give me a hundred maravedis?" and the other replies: "I promise to give you fifty;" and the party who put the question is silent and returns no answer to what the other said; the promise is valid so far as the said fifty maravedis mentioned in the promise are concerned. Moreover, we decree that where a question is put in the following manner, to-wit: "Do you promise to give me a hundred maravedis?" and the other party answers, "I promise to give you a hundred and fifty;" the promise will be valid with respect to the hundred maravedis, referred to in the question and not to the balance, if the party who received the promise is silent when the other answered his question. If, however, he should answer that he accepts his promise, the whole of it will be valid.

LAW XXVII.

Whether a Promise Made Concerning Property Not Mentioned by the Party Who Asks the Question Is Valid, or Not.

Beasts of burden, slaves, birds, and other property of this kind, have their own particular names. For this reason we decree that where a man desires to receive a promise from another, and says: "Do you promise to give me a certain slave, named Abdallah?" and the other answers: "I promise to give you Abraham," a promise of this kind will not be valid except where the party who makes the request admits, as soon as the other answers him, that he is satisfied with the reply; for in this case the promise will be valid, so far as the slave mentioned by the party is concerned. We decree that the same rule shall be observed with regard to all promises made in this way concerning other property, where the answer does not correspond with the question.

LAW XXVIII.

A Promise Exacted by Force Is Not Valid.

Where one man promises to give something to, or perform something for another, and is induced to do so by fear, force, or fraud, although he may bind himself under a specified penalty, and swear that he will do what he promises;

we decree that he shall not be bound to comply with the promise or pay the penalty. Where, however, after he has made such a promise, he voluntarily pays said penalty, or performs what he agreed to without any compulsion, from that time forth he has no power to claim what he gave, or question what he performed. This is the case for the reason that he loses the right which he enjoyed in not being bound to do or pay for what he promised, because said promise was obtained through fear, force, or fraud, and he voluntarily, and without compulsion, complied with what he promised. We also decree that every contract made contrary to our religion, or in violation of good customs, shall not be observed, even though a penalty or an oath may be inserted in the same.¹

LAW XXIX.

A Promise Made by a Man to His Steward or Butler That He Will Not Prosecute Him For a Theft or Fraud Which He Has Committed, Is Not Valid.

Where a man makes a contract with, or a promise to his steward or his butler, that he will not hereafter prosecute him for some fraud or theft which he has committed, an agreement or promise of this kind will not be valid. This is the case because such agreements may open the way to men to do wrong, and they should not be observed. We decree that this should be understood in the following manner, namely: that no agreement or promise made with reference to any fraud or theft committed after the day on which said promise was made will be valid; but other offenses which have been already committed before said promise was made, will be affected by an agreement or contract made with the party who committed them that he will never be prosecuted on that account. What is stated in this law concerning stewards and butlers, is also understood to relate to all other men who enter into an agreement with, or make a promise to one another, concerning any act similar to these.

¹ This is the doctrine of the civil law, where absolute consent is recognized as indispensable to the validity of a contract. "*Nihil consensui tam contrarium est, qui ac bonae fidei iudicia sustinet, quam vis ac metus, quem comprobare, contra bonos mores est.*"

It was necessary for the violence to be imminent in order to invalidate a contract, and a mere apprehension or suspicion of it, without just grounds, was not sufficient. "*Metum autem praesentem accipere debemus, non suspicionem inferendi ejus.*" (Corp. Jur. Civ. Dig. IV-II-9.) Where the injured party subsequently neglected to take advantage of his right to have the contract set aside, as having been extorted by force, within the time prescribed by law, or afterwards, when at liberty, he confirmed it either expressly, or by implication in some other way, it was considered valid.

The important question of duress is treated at length in all works of ancient and mediaeval jurisprudence. It is explicitly set forth in the Visigothic Code (For. Jud. V-II-9.) Compulsion under Moslem law applies only when one party has the power to perform what he threatens, and the other firmly believes that he will do so. "As it is essential to the establishment of compulsion, that the compeller be able to carry his menace into execution, so likewise it is requisite that the person compelled be in fear that the compeller will execute what he threatened." (The Hedaya, XXIV.) It is also the rule that temporary loss of freedom by the exercise of duress, as it does not affect the status of the party concerned, will not invalidate a contract if confirmed by the latter after the undue restraint has been removed. (Syed Ameer Ali, Mohammedan Law, Vol. II, p. 45.) This corresponds with the rule of both the Civil and the Common Law by which such contracts are merely voidable, and are rendered valid by subsequent ratification. At Common Law duress *per minas* only existed where there was well grounded apprehension of serious bodily injury, as loss of life or limb, or mayhem. "*Talis enim debet esse metus, qui in se continet vitae periculum, aut corporis cruciatum.*" (Bracton, Treat. II-V.) This ancient doctrine, based upon the assumption that no amount of money could compensate a man for grave corporal injury, justified submission under such circumstances instead of reliance upon the law, from which adequate remuneration could not reasonably be expected. This rule does not apply to menaces of inferior importance, such as those of assault, or damage to property, where an action is presumed to afford a proper and sufficient remedy.

To constitute duress of imprisonment under our laws, the restraint must either be illegal, or be exercised by way of extortion to compel the imprisoned person to perform some act against his will.

The scope of the law relating to duress has been greatly extended and amplified by modern European legislation. A party to a contract may avoid it where a threat is directed against his person or property, or that of his wife, or relatives in either the ascending or descending lines. Violence, when employed, must be irresistible. "*Hay intimidación cuando se inspira á uno de los contratantes el temor racional y fundado de sufrir un mal inminente y grave en su persona ó bienes, ó en la persona ó bienes de su conyuge, descendientes ó ascendientes.*" (Cód. Civ. de Esp. IV-II-1, Art. 1267.)

The Italian Code specifically provides that violence exerted by a third person in favor of one of the parties to a contract will render it void. "*La violenza usata contro colui che ha contratto l'obbligazione, è causa di nullità, ancorchè sia stata usata da una persona diversa da quella, a vantaggio della quale si è fatta la convenzione.*" (Cod. Civ. d' It. III-IV-2, Art. 1111.) This is also the rule in France. (Cod. Civ. de Fr. III-III-2, Art. 1111.) By the laws of all the above-mentioned countries, the age, sex, and condition of the parties involved must always be taken into consideration, in the determination of the question as to whether or not duress was actually employed.—Ed.

LAW XXX.

A Promise Made With Respect to An Account Which Has Been Rendered Not to Ask It a Second Time, Shall Not Be Valid, If Any Fraud Was Committed in Rendering Said Account.

Where a man holds an office from a lord or a council, or from any other person whomsoever, and when he renders him an account fraudulently conceals something; although the lord may be pleased with him by reason of said account, and give him a receipt in full, and promise him that, from that time forth he will not call in question what he received from him; a contract or promise of this kind will not be valid, so far as anything concealed by the party is concerned, although it will be valid with reference to everything else concerning which he rendered a true account.

We decree that the same rule shall be observed with respect to all other accounts which men render to one another concerning property which they hold in common; for although some of them may admit that they have been paid, by producing the account which was rendered, and promise never to call said account in question; if it should be certainly ascertained that the party who rendered said account or had charge of said property, fraudulently concealed anything, or committed some other deception against those who have an interest in the same; neither a contract, an agreement, nor a promise of this kind will be valid. We decree that the said parties can demand that the other make reparation for the fraud of which he was guilty, as well as for all the damages and losses which resulted from it, except where he was specifically released from liability for the fraud which he committed.

LAW XXXI.

A Promise Involving Usury Is Not Valid.

Where one man lends another twenty maravedis or some other specified amount, taking from him the promise that he will give him thirty or forty maravedis for their use; a promise of this kind is void, nor is the party who makes it bound to carry it out, except so far as the twenty maravedis which he received are concerned, and this is the case because it is in the nature of usury. But where one man lends another twenty maravedis, and accepts his promise to give him eighteen or anything less than the amount that he received, we decree that a promise of this kind shall be valid, for the reason that it contained no usurious fraud, since the party receives less than he lent.¹

¹ There is no offense which has been more generally reprobated by legislators and moralists than usury. The Bible inveighs against it, (Exod. XX-25, Levit. XXV-35-37). The Jews were, however, allowed to accept interest from a stranger, a privilege of which they diligently availed themselves in subsequent ages. (Dent. XXIII-20.) In the body of Islamic tradition, second in authority only to the Koran, Mohammed is reported to have said: "Cursed be the taker of usury, the giver of usury, and the witness of usury, for they are all equal." The term has a much broader significance among Moslems than with us, and includes any "excess of measurement or weight in one or two homogeneous articles opposed to each other in a contract of exchange, and in which such excess is stipulated as an obligatory condition on one of the parties, without any return." (The Hedaya, XVI-VIII.) The testimony of a notorious usurer is not admissible in a court of law, and is placed on a par with that of atrocious criminals, and infidels.

The legal rate of interest was limited by the Visigothic Code to three *solidi* for every *solidus*, about twelve-and-a-half per cent. In the case of the loan of wine, oil, or grain, three measures could legally be returned for two, equal to thirty-three-and-a-third per cent. (For. Jud. V-V-8, 9.) Usury, by the Twelve Tables, was punished by compulsory restitution of fourfold the amount involved. This penalty was also adopted by the civil law, under which, while a thief was condemned to pay double the value of the property stolen, the taker of usurious interest was, as above stated, required to pay four times as much. Under the Republic, the authorized rate of interest was one per cent a month; Justinian established a scale of rates varying from four to twelve per cent, dependent upon the rank or occupation of the lender. The acceptance of compound interest, styled *anatocismus*, from the Greek, was unlawful under all circumstances by the Roman law.

The canon law rejected the offerings of those habitually guilty of usury, and deprived them of communion and consecrated burial. "*Usurarii manifesti, nec ad communionem admittantur altaris, nec Christianam (si in hoc peccato decesserint) accipiant sepulturam, sed nec oblationes eorum quisquam accipiat.*" (Corp. Jur. Can. Decret. V-XIX-3.)

In France and Italy the legal rate of interest may be exceeded by agreement, which must be in writing. In France, the rate is four per cent per annum in civil matters, and in commercial affairs five; it is five and six respectively in Italy. (Cod. Civ. de Fr. III-X-3, Art. 1907.) (Cod. Civ. d' It. III-XVIII-4, Art. 1881.) In Spain it is unlawful to collect more than six per cent. (Cód. Civ. de Esp. IV-I-2, Art. 1108.)—Ed.

LAW XXXII.**A Promise Should Be Annulled When Either of the Parties Says That He Was Not Present When It Was Made.**

Some men can be induced through malice to annul the promises which they make, by stating that they were not present and did not agree to them in the places where they were said to have been made. For this reason we decree that where a document drawn up by the hand of a notary public and signed by witnesses, or any other instrument sealed with an authentic seal is produced, in which it is set forth that, both parties being present, one promised the other to give him something or perform some act for him, said document shall be believed even though the other party denies that he was present, or made such a promise. If, however, he can prove by three or four good, faithful, and credible witnesses that, on the day stated in the document that he made said promise, he was so far away from the place in which it is alleged this was done, that he could, under no circumstances, have arrived there to make said promise, it will be sufficient. And if he cannot prove this by witnesses, it will be sufficient if he proves it by another document drawn up by a notary public, which is of such a nature that it can be proved by it that he was not present at the time, and could not have arrived there to make said promise. If either of these things can be established, the document produced against him shall not be believed.

LAW XXXIII.**A Promise or a Contract Made by Men With One Another That One of Them Shall Inherit the Property of the Other, Is Not Valid Except in Particular Cases.**

Where two men enter into a contract with, or make a promise to one another that, whichever one of them dies first the other shall inherit all his property, we decree that an agreement or promise of this kind shall not be valid, in order that neither of them may take occasion to compass the death of the other in order to inherit his estate. Where, however, two knights enter into such a contract with, or make such a promise to one another before going into battle, or engaging in some exploit, and either of them dies there, the survivor should inherit his estate, provided the deceased did not leave any legitimate children. And if neither of them happens to die, and, after they have escaped, either should wish to change his mind, and desires to revoke the agreement or promise, he can do so; but if he does not do this, but consents to it until his death, the survivor will inherit the property of the deceased, as aforesaid.

LAW XXXIV.**What Penalty Those Deserve Who Do Not Keep the Promises Which They Make.**

Men sometimes add a penalty to the promises which they make, that they may be more secure and better kept. A penalty of this kind is called, in Latin, *conventionalis*, which means a penalty imposed with the consent of both parties. For this reason we decree that although the penalty may be inserted in the promise, the party who makes it is not bound to pay said penalty and to do what he promised, but only to do one of these things; except when he made the promise he entered into an obligation by stating that he was bound to do everything, that is to keep the promise in every respect and pay the penalty any time that he violated the contract. In this instance both the penalty and the property promised can be demanded.

LAW XXXV.**What Penalty a Party Deserves Who Promises to Give Something or to Perform Some Act on a Certain Day, and Does Not Give It or Perform the Act.**

Where one man promises another to give him a certain thing under a specified penalty on a designated day, and on that day he does not give or do what he agreed to, he is bound to pay said penalty or to give or do what he promised, whichever the party who received said promise prefers; and he cannot avoid doing so, although the other may never have demanded it of him. We also decree that if the party who made said promise does not appoint a certain day on which to carry it out; and after this the other demands, within a reasonable time and at a proper place, that he perform what he promised, and having the power to do it he is unwilling; or where the time has passed in which he could have done it if he so desired, at any time after that he will be bound to pay said penalty.

We also decree that, where a man makes a promise to give something or do something for another party, not designating a certain day on which to do so, or binding himself under any penalty, and where the party who made a promise of this kind permitted sufficient time to elapse during which he could have kept his promise if he had wished to do so; and it appears that through negligence he did not wish to; the party to whom the promise was made, can, at any time afterwards, bring an action for what was promised along with all damages and losses which he sustained by reason of the noncompliance of the party with what he agreed to. Where, however, the party who made the promise attempts at once to do what he agreed to, before he answers the other in court, this should be sufficient; and if he carries out his contract he will not be bound to pay damages or make good the losses, as we stated above.

LAW XXXVI.**Concerning the Penalty Promised by One Man to Another to Produce Some Party in Court.**

A penalty agreed upon with respect to a promise made in court is called, in Latin, *pena judicialis*, and this takes place where a man in presence of the judge binds himself to another, promising under a certain penalty that he will assist in compelling the party against whom the latter complains to be present and abide by the decision of the court, at the time agreed upon. For although the party who thus becomes a surety may not produce the other at the time agreed upon, but does produce him two, three, or five days later, if this is approved by the judge, he shall not for that reason be liable to the penalty. But during this extension of time which we consent that the party may have, we order that none of the rights of the other party which he has in the principal claim shall be lost or injuriously affected, but that they shall remain so that he can safely prosecute his suit, just as he could have done at the first time agreed upon. We decree that this shall apply in the case of all other similar penalties which men attach to the promises which they make with one another in the presence of judges.

LAW XXXVII.**For What Reason a Man Can Avoid Paying the Penalty Which He Promised Even Though He Does Not Bring Into Court the Party Whom He Promised to Produce.**

When one man becomes security for another in court, promising and binding himself to produce him on a certain day under a specified penalty, we

decree that where he was prevented from doing this by any lawful impediment on account of which he was unable to produce him; as, for instance, through sickness, or the overflow of a river, or some other obstacle of this kind, he will not be bound to pay the penalty, but he should produce him in court as soon as said impediment has been removed. We decree that the same rule shall apply where a judge of arbitration orders either of the parties to do something on a certain day, and under a certain penalty; for where either of the parties meets with any lawful impediment, by reason of which he cannot do this, he shall not be liable to said penalty, where he attempts to do what was ordered, as soon as he can.

What we stated in this law, and in the other which precedes it, applies to penalties agreed upon in court; but with respect to penalties which are not agreed upon in court, and which men consent to extrajudicially, where either of the parties does not perform what he promised within the time appointed for doing so, he will be bound to pay the penalty, and he cannot avoid doing so by alleging any impediment which he may have encountered; except where the penalty was agreed upon concerning some certain property which was to be given and it was lost or died without the fault of the party, before the day on which he was to have given or produced it.

LAW XXXVIII.

A Penalty Promised by Anyone to Be Paid If He Does Not Kill Some Person, or Commit Some Crime, Shall Not Be Valid.

Where men agree upon the penalty with regard to a promise which is made, even though the promise may not be valid the penalty will be, and the party who agreed to it will be bound to pay it; except where the promise is made with reference to something which is contrary to law or to good customs. This would be the case where a man promises, under a certain penalty, to kill someone or to commit adultery, or some other offense of this kind; then, although he may not keep a promise like this, he will not be bound to pay the penalty. Moreover, we decree that where one man promises another to give him some special property if he will kill some one, or commit some offense, he will not be bound to give him what he agreed to even if the other party performs the wicked act in consideration of which he promised to give him said property; nevertheless, not only the party who made the promise but also the other who committed the offense on account of it, are both liable to punishment, or to make reparation for said offense, as the laws of this our book direct.¹

LAW XXXIX.

A Penalty Promised on Account of Marriage Cannot Be Collected.

Men sometimes desire to have a marriage celebrated, and for the purpose of accomplishing this they bind themselves under a specified penalty, promising one another that the marriage will be solemnized. They do this for the reason that those on account of whom the promise is made and who are to be married, are not present when it is done, or because they are not of age, or for some other reason. Wherefore, we decree that if one of them should

¹ The principle that a contract based upon a consideration which is illegal, or contrary to public expediency or true morality, is void and cannot be enforced, necessarily dates back to the origin of human society. This doctrine was early asserted by the Civil Law. "*Pacta, quae turpem causam continent, non sunt observanda.*" (Corp. Jur. Civ. Dig. II-XIV-27-4.) Courts refuse to recognize such agreements as binding, in accordance with the familiar maxim; "*Ex turpi contractu actio non oritur.*" Even the party principally implicated is entitled to make this the ground of his defense, a course permitted as a matter of public policy; but where the compensation for the unlawful act has once been delivered, he cannot recover it by an action at law.—Ed.

not be willing for the marriage to be celebrated, then the party who made the promise for the one who does not consent, shall not be obliged to pay the penalty. This is the case because marriage should not be entered into through fear of punishment, but through love and with the consent of both parties, as we stated in the Fourth Partida of this our book, which treats of Marriages.

LAW XL.

A Penalty Agreed Upon on Account of Usury Cannot Be Collected.

Men consent and promise others to give something or to perform some service, binding themselves under a special penalty if they do not perform what they agreed to, or promised. They are induced to attach these penalties to their promises for two reasons. First, in order that those who promised to give something or to do some service, may be more diligent in keeping their promise, through fear of the penalty. Second, because certain persons do this for purposes of fraud, in order to have an opportunity to make something by way of usury. Wherefore, we decree that where the penalty is agreed upon with reference to something which a man promises to do, the party who made the promise becomes liable to it and he will be bound to pay it if he does not do what he promised, as we stated in the preceding laws; but where the penalty was agreed upon concerning a certain sum which the party promised to pay, and he who receives the promise is a man who makes a practice of taking usury; then the party who made the promise is not liable to the penalty, even if he does not make payment at the appointed time. If, however, the party who receives the promise is a man who had never taken usury, then he who makes the promise will be bound to pay the penalty if he does not do what he agreed to.

Moreover, we decree that any contract or agreement entered into in the presence of witnesses, or in writing, with relation to the fraud of usury, shall not be observed. This would be the case where a party who lends money honorably, takes some land as security for it, and makes it appear that the party who gives it as security sells it to him, causing him to make for that purpose a deed so that he may obtain the crops of said property, that he may not be accused of usury. For this reason we decree that fraud of this kind shall not be valid where the contract is proved, and the loan was a genuine one, and the deed was executed for the purpose of deceit.

TITLE XII.

Concerning Suretyship Which Men Give One Another in Order That the Promises and Other Contracts and Agreements Which They Enter Into May Be Better Fulfilled.

Men give suretyship to one another in order that the promises, contracts, and agreements which they enter into may be the better fulfilled, and therefore, since in the preceding Title we treated of Promises, we desire to treat here of the suretyship given on account of them. We shall explain what suretyship means; in what respect it is beneficial; who can give it and for whom; concerning what property it can be given; in what way suretyship should be given; what force it has, and how it can be annulled; and after this we shall speak of all the acts which some men perform for others, either by their direction or without it, through which obligations arise among them, which is another kind of suretyship.

LAW I.

What Suretyship Means, in What Respect It Is Advantageous, Who Can Be a Surety, and Who Cannot.

A surety means a man who pledges his faith and promises another to give or to do something either by the order or at the request of the party who gives him as security. This is very advantageous to the party who receives it, for he is for this reason more certain of what is to be given him or done for him, because both parties are bound, not only the surety but the principal debtor as well. We decree that every man can be a surety who can make a promise so as to be bound by it; and moreover, all persons who can receive promises, as explained in the preceding Title, which treats of Promises, can accept sureties.

LAW II.

What Persons Cannot Be Sureties.

There are certain men who, although they can make promises for themselves, cannot become sureties for others; as, for instance, knights belonging to the guard of the king, who receive pay from the monarch and hold lands of him. Men should not accept persons of this kind as sureties, in order that the service which they are obliged to do the king may not be interfered with; and, moreover, men cannot obtain justice from them as well or as easily as from others. The law especially forbids knights to be sureties for those who lease or hold duties by fealty, or revenues of the king, or any other royal dues, and we decree that the same rule shall apply to bishops and to the regular clergy, as well as to monks; for it might happen that, through their becoming sureties, the service which they are required to perform for God may be interfered with, and injury result therefrom to the Church.

We also decree that no slave can become surety for another party, except where he has separate property of his own which his master has given him, for he can then become surety for another to an amount equal to the value of said property. Moreover, we decree that no woman can become a surety for another party, for it would not be proper for women to go into court, on account of suretyship which they have given, and be compelled to resort to places where many men are assembled, and to do things which might be contrary to chastity, or opposed to the good customs which women should observe.

LAW III.**For What Reasons Women Can Become Sureties for Others.**

We stated in the preceding law that a woman cannot become a surety for another person, but there are reasons why she can do so. First, when she becomes surety for someone on account of freedom. This would be the case where a party is willing to emancipate his slave for a certain sum of money, and some woman becomes surety for the sum necessary for said emancipation. Second, where a woman becomes surety to another woman on account of a dowry. This would be the case where a woman becomes a surety to some man for the dowry which he was entitled to receive from the wife whom he married. Thjrd, where a woman was aware and certain that she could not, and ought not to become a surety, and afterwards does so, willingly renouncing and abandoning the right granted to women in this respect. Fourth, where a woman becomes surety for another party, and remains so for two years, and the said party gives pledges to the person to whom she becomes surety, or draws up another contract in which he again renewed the suretyship; for in this case a man would conjecture that the principal debt, for which the suretyship was given, more probably belonged to her than to the party for whom she became surety. The fifth reason is where a woman receives compensation for becoming surety. The sixth is, where a woman fraudulently dresses herself as a man, or is guilty of some other deception in order to be accepted as surety, giving the impression that she is a man; for the right which women enjoy with regard to suretyship was not granted them for purposes of fraud, but on account of their artlessness and their natural weakness. The seventh reason is, where a woman becomes a surety for her own acts. This would be the case where she becomes surety for a party who became surety for her, or in some other way of this kind which was for her own advantage, or on account of her own affairs. The eighth reason is, where a woman becomes surety for anyone, and after that inherits his property. We decree that the suretyship shall be valid, and that a woman will be bound by it in any of the eight aforesaid instances in which she becomes surety for another.

LAW IV.**Concerning Men Who Become Sureties for Boys Who Are Under Age.**

Where a man becomes surety for a youth under twenty-five years of age, and said minor is defrauded in the matter with regard to which the suretyship was given; neither the minor nor the party who becomes his surety will be bound for the amount of the fraud, and we decree that this should be set aside. But where no fraud was committed with regard to the property or the contract for which surety was given, although the youth may take advantage of the right accorded him on account of his minority to repudiate an agreement or contract made to his injury; the surety will, nevertheless, be bound to carry out his contract, although he may be unwilling, and he cannot avoid doing so for any reason of this kind; and moreover, if he pays such a claim he cannot demand it of the minor.

LAW V.**For What Property, and in What Contracts, Sureties Can Be Given.**

Sureties can be given in all matters or contracts by which men can bind themselves, and we decree that there are two kinds of obligations in which suretyship can be given. First, when the party who gives it becomes bound by it, so that although he may not be willing to carry out his contract, he can

be compelled to do so. An obligation of this kind is called, in Latin, *obligatio civilis et naturalis*, which means a bond made according to law and nature. The second kind of obligation is solely a natural one, and is of such a character that the man who makes it is naturally bound to comply with it, although he cannot be compelled to do so in court. This would be the case where a slave promises another party to give him something or perform some act for him, although he cannot legally be compelled to do so because he has not personality to appear in court; nevertheless, he will be naturally bound to do what he promised, inasmuch as he is a human being. For this reason we decree that every man who can be bound in any of the ways aforesaid can become a surety for another party and be obliged to make payment for him, although he may not wish to do so.

LAW VI.

In What Way Suretyship Can Be Given.

One man can become surety for another in the following way: by the party who accepts him saying to the one who becomes the surety; "Do you, So-and-So, become surety for such-and-such a thing which Such-and-Such a man is to give me or to do for me?" and if he answers Yes, or says; "I become surety for him;" or consents to it answering in this way or by other words like these, he in this manner becomes bound just as the principal debtor is. One man can become surety for another, if he wishes to do so, before the principal debtor binds himself; as, for instance, where he says; "If you lend so many maravedis to So-and-So, I will become surety to you for their payment;" and he can also become surety along with the borrower, by saying; "I will become surety for Mr. So-and-So, for these maravedis, or for this property."

A party can also become surety after the principal debtor has been bound, as, for instance, where he says: "I become surety for such-and-such property, that Such-and-Such a man owes you, or for the service he is to perform for you." Where one man becomes surety for another in either of the cases aforesaid the undertaking will be valid. Moreover, a man can become surety for a certain time, and this is the case where he says; "I become surety for So-and-So until such-and-such a day." A party can also become surety under a condition, by saying; "I become surety for So-and-So, if such-and-such an event takes place." Suretyship of this kind, or any other like it, is valid until the time or the day, designated, or according to the terms in which it was given.

LAW VII.

A Surety Should Not Be Bound for More Than the Principal Owes.

A surety should not become bound for a larger amount than the principal debtor is, and if he does, the suretyship will not be valid for the amount of the excess. This excess according to law is of four kinds. First, when one party becomes surety for another he binds himself for more than the latter owes, to the person accepting the security, and this would be the case where he owed a hundred maravedis, and the other party became surety for a hundred and twenty, or for any amount over a hundred; for suretyship of this kind will not be valid so far as the excess is concerned. Second, when the principal debtor is bound to give something at a certain place, and the party becomes a surety to deliver said property at a place more difficult of access; and in a case of this kind the suretyship will not be valid. Third, when a party who owes something was bound to pay it at a certain time, and his surety binds himself to pay it in a shorter time. This would be the case

where the party was bound to pay it within two years, and the surety bound himself to pay it in one year; and we decree that suretyship of this kind shall not be valid. Fourth, where the principal debtor was bound to pay something himself to pay it absolutely without any condition whatever. A contract of under a specified condition, and the party who became his surety binds this kind will not be valid for the reason that the surety bound himself to a greater extent than the principal debtor.

LAW VIII.

What Effect Suretyship Has Where It Is Given by Several Persons Together.

Where several men become sureties together, each one of them binding himself to pay something to, or to do something for another party, they are bound to do this in the way in which they promised, so that the person who accepts the suretyship can demand of all together or of each individually the entire debt for which they become sureties, and where one of them pays said debt the others will be released. Where, however, each one of said sureties does not bind himself for the entire amount, but they say; "We become sureties for So-and-So that he will pay such-and-such an amount, or do such-and-such a thing;" then if all are wealthy enough to be able to pay the amount at the time the debt is demanded, we decree that the creditor cannot claim the entire debt of each one of them but only the share for which he is liable. Where any of said sureties are so poor that they cannot pay their shares, then the others who have the means to pay, whether they are one or many, will be obliged to pay the entire principal debt, or to perform the act for which they become sureties.

LAW IX.

Suit for a Debt Should First Be Brought Against the Principal Debtor Rather Than Against the Surety.

The principal debtor being at hand, suit should first be brought against him to pay what he owes, and not against those who become sureties for him; and if he should not happen to have the means wherewith to pay, suit should be brought against the sureties. If the sureties happen to be in the place where payment is to be made, and the party for whom they became sureties is not; and suit for payment of the debt is brought against them; and they ask for time in which to produce the party for whom they became sureties, it shall be granted them. If at the expiration of said time they do not produce him, they should then answer, and each one of them should pay his share, the wealthy ones for those who are poor, or one for all, in the way stated in the preceding law. The judge before whom suit is brought for the debt should grant them this indulgence in his discretion, making an estimate of the time within which they may be able to produce him.

LAW X.

How When Two Men Become Principal Sureties for a Debt They Should Pay It.

Where several men bind themselves, each one for the whole amount, becoming principal debtors and obligating themselves to give something to, or to perform some act for another party; and all of them are present when the creditor makes a demand upon them for the debt; although each became surety and debtor for the other, nevertheless, the entire debt should not be demanded of any one of them, for we decree that each shall be compelled to

pay his share, if they all have means to do so. Where all are not in the country, or any one is not solvent, then those who are present and are solvent must pay the whole debt, whether there be one, two, or more of them.

LAW XI.

A Party Who Receives Payment from One Surety Should Grant Him Authority to Sue the Others.

Where one surety pays the entire debt in his own name, he should ask the party to whom he makes payment to grant him authority to collect the debt from the sureties who were his associates, as well as from the principal debtor, and the creditor should grant him such authority; and after he has done so the party has the choice of bringing an action against any of the other sureties for the amount of the shares which he paid for them; and if anyone of them is so poor that he cannot make payment at that time, he should take security from him to do so as soon as he can. He can also sue the principal debtor for the share which he paid for himself and if he does not wish to do this, he can demand, for himself, the entire debt from the principal debtor, even though the creditor did not grant him authority to do so. Where one of the sureties pays the entire debt, in the name of the party for whom he becomes surety and not in his own, then the creditor who received payment from him cannot grant him power to collect anything of the other sureties. This is the case because the whole right which said creditor had to collect the debt of the other sureties, or to grant authority to the party who paid him to sue for it is entirely abrogated, for the reason that the surety made payment to him in the name of the principal debtor. A surety who pays a debt, as aforesaid, retains his right, however, to collect what he paid from the party for whom he became surety, and if any surety pays the entire debt, not stating whether he does so in the name of the principal debtor, or in his own name; and as soon as payment has been made asks the creditor to grant him authority, to demand what he paid from the other sureties; we decree that it shall be granted him, and, if he does not ask it, from that time forward he must not grant such authority, for the reason that it would appear that the surety made payment in the name of the principal debtor, and not in his own. He has, however, the right to demand of said debtor to reimburse him for what he paid for him.

LAW XII.

The Principal Debtor Is Bound to Reimburse the Surety for What He Paid for Him.

Where one man directs another to become surety for him, or where the latter voluntarily becomes his surety in the presence of the party to whom he is bound, without his direction, and without his manifesting any opposition; or where he becomes surety for him elsewhere without his knowledge, or request, and when he learns of it consents to what the other party did, and approves of it; or also where he becomes surety for him, without his request, with respect to what the other party should give or do, or with reference to something which may be to his advantage, even if the debtor does not give his consent; where one man becomes surety for another in any of these ways his act will be valid. And when the surety makes payment for his principal, the other is bound to reimburse him, and to enable him to recover, except in three instances. First, where the surety pays the debt and does so with the intention of giving it to the creditor for the benefit of the other party for whom he becomes surety, or paying it for him with the purpose of never demanding

it of him. Second, where the suretyship is given for the benefit of the party himself who becomes the surety. Third, where a party becomes surety against the prohibition of the party for whom he becomes liable; as, for instance, if the latter should say; "I do not ask you to become surety for me, but on the other hand I forbid you to do so;" or where he uses other words of this kind.

LAW XIII.

Where One Man Directs Another to Become Surety for a Third Party, He Is Liable to Him for All Damages Which He May Sustain by Reason of Said Act.

Where one man becomes surety for another who is not present, not doing so by his direction but at the request of a third party, we decree that where a surety of this kind pays anything for the person for whom he becomes bound, he cannot collect what he paid from him, but he can do so from the party at whose request he assumed the obligation. If when the suretyship was given in this way, however, the party for whom he gave it was present and did not show any opposition; or where he became surety in his name although he was not present, and this was done for the advantage of the person for whom the suretyship was given; the party who became surety has then the choice to demand what he paid from him for whom he becomes surety, or from the other third party at whose request he assumed the obligation, and they will be obliged to pay him.

LAW XIV.

For What Reasons Suretyship Is Abrogated and the Surety Can Be Released from It.

Sureties should not apply to any judge to use compulsion against those for whom they gave security, for the purpose of being released from their obligation before they have paid something on the debt for which they became liable, except for five reasons. First, where the party who became surety is ordered by the court to pay the entire debt, or a portion of it. Second, where a long time has elapsed since he became surety, and this time should be determined by the opinion of the judge. Third, where the party who became surety thinks that the time has passed in which the debt should be paid, and in order not to be liable to the penalty, either he or the party for whom he became surety to the creditor desires to make payment, and the creditor refuses to receive said payment for some reason or other, or it may be because it is not tendered in the proper place; and the surety then deposits what he owes in trust in some church or monastery, or in the hands of a reliable man in the presence of witnesses. Fourth, if, when the party became surety, he designated a certain day upon which he should be released, and it has passed. Fifth, where the party for whom he became surety begins to waste his property. For any of the reasons aforesaid suretyship may be abrogated, and the surety may compel the party for whom he assumed the obligation to release him from it.

LAW XV.

Sureties Should Introduce Defenses in Court, if They Have Any, or the Parties for Whom They Became Such Should Do So, Against the Parties Who Bring Suit Against Them.

Where a surety is sued in court for a debt for which he became such, and is aware that the party for whom he is bound has any defense by which, if it was set up, the claim might be declared invalid, but is not willing to

divulge it, and a decision is rendered against him; although the surety may pay the debt for this reason, he cannot collect it afterwards from the party for whom he became surety, because he would seem to have acted fraudulently by causing the other party to lose his rights. We decree that the same rule shall apply where the said surety might have made such a defense that, if this had been done, it would have been to the advantage of himself as well as of the party for whom he became surety, and refused to do so. This would be the case where the creditor had made an agreement with the principal or the surety that he would never demand the debt, or entered into any other agreement of this kind for the purpose of releasing the claim, and the surety, being aware of this, was unwilling to make such a defense against the creditor demanding payment of the debt. And, although we stated that while the surety had any defense and was unwilling to make use of it when suit was brought against him for the debt, for this reason he could not afterwards collect from the party for whom he became surety what he paid for him, there are instances in which this would not be the case; as, for example, where the defense relates to the person of the surety alone and not to that of the principal, as where the surety is a woman, although she could, according to law, when suit was brought against her set up the defense that she was not bound to answer because suretyship of women is not valid except in particular instances; nevertheless, even if she may not be willing to make such a defense, the party for whom she becomes surety is bound to reimburse her for what she paid for him. We decree that the same rule shall apply where the defense has reference solely to the person of the principal debtor, and not to that of the party who became surety; for although the surety may have been released from the claim if he made a defense, nevertheless, the party for whom he became surety is bound to reimburse him for all that he paid for him.

LAW XVI.

Suretyship Is Not Released by the Death of the Surety.

When a surety dies, his heirs are still bound by his obligations, just as he himself was while living, and all the defenses and rights which we stated in the preceding laws are possessed by a surety, descend to his heirs individually, to the same extent that he himself could or should possess them. Moreover, we decree that where a surety or his heirs pay a debt which they were obliged to pay, and do so voluntarily without any judgment in court, or without any compulsion whatever; the party for whom the surety assumed the obligation shall be bound to reimburse them for what they paid, just as if they had been compelled to pay it in court. If, however, it happens that they made such payment before the appointed time, they cannot make the demand until the day indicated for said payment.¹

¹ The general correspondence of the principles governing the condition and defining the responsibility of suretyship, as set forth in the preceding pages, with the rules in compliance with which these are regulated by the jurisprudence of modern times, is very marked and striking, and is explained by the fact that all the provisions on this subject are derived from the *fidejussio*, or personal security of the civil law. The chapters of the *Partidas* are practically literal translations of parts of the Institutes and Digest. The term was indicative of a verbal obligation, or *stipulatio*; "*Fidejussio est verborum obligatio qua quis alienam obligationem in fidem suam suscipit ita ut debitor principalis maneat obligatus.*" (Corp. Jur. Civ. Inst. III-XXI.) It might also be reduced to writing, but this was not usually done. Sureties were, each and all, responsible for the entire debt, which liability extended to their heirs. All of the parties bound by the obligation being jointly and severally liable, the creditor had the right to bring his action against any of them. Each of the sureties had recourse against his principal as well as against the others. A law passed by Hadrian authorized a surety to compel his creditor to first exhaust the property of the principal, and then sue him for his *pro rata* share; the extent of his liability, of course, being dependent upon the solvency of his associates. He was also entitled to demand an assignment of the claim by the creditor, the better to enable him to collect it from the original debtor, or their shares of what he had paid from the other sureties. He could not be forced to discharge the debt until the creditor had made such an assignment. "*Fideiussoribus succurri solet, ut stipulator compellatur ei, qui solidum solvere paratus est, vendere ceterorum nomina.*" (Corp. Jur. Civ. Dig. XLVI-1-17.)

Joint and several liability for an obligation contracted exists also under the Mohammedan law. "If the person to whom the bail is given call upon either of the two parties—that is either upon the debtor or

LAW XVII.**How Much Time a Party Who Becomes Surety for a Man That He Will Answer a Charge in Court, Has to Produce Him.**

Where a man is accused of some offense and another gives bail for him, in presence of the king or of any of the other magistrates who sit in court under his orders, binding himself under a certain penalty that the party will answer a charge on a designated day, he should produce the party who is accused on that day in order that this may be done. And if it should happen that he cannot find the party he must be granted as long a time as he had before, to search for him and produce him before the judge, if it should be less than six months, and where the time was six months, he should have an equal period in which to search for him; and if he is unable to find him, or should not produce him in order to answer the charge until a year has expired, he shall then be required to pay the penalty for which he bound himself.

LAW XVIII.**How a Surety Can Defend His Principal in Order to Produce Him to Answer a Charge in Court.**

A party who becomes bail for another in the manner we mentioned in the preceding law, after the first term has passed during which he was bound to produce him in court, has the right, if he desires, to defend him in court, in the matter concerning which he was accused or summoned; and he can do this until the second period has elapsed. After he has begun to defend him he cannot stop until the case is terminated, although the party for whom he became bail may die in the meantime. If it should be found that the party for whom he became bail was not guilty, he will be thereby released from his obligation. If he should be found guilty, the bail should then pay the other party the penalty for which he bound himself, together with all damages and losses arising from this source. But where the party for whom security was given is obliged to pay something or perform some act in the case in which he was summoned, the surety must pay this or do it, and, in addition, make good the damages and losses sustained by the other party on this account; and where he does this he will not be obliged to pay the penalty for which he bound himself, since he defended the party in court until a decision was rendered.

LAW XIX.**How Bail Is Released Where the Party Dies for Whom It Has Been Given to Produce Him in Court, and What Penalty the Bail Is Liable to if the Party Is Living and He Does Not Produce Him at the Time When He Should Have Done So.**

Where a party dies whom any one has bound himself to produce in court, before the first term expires in which he should have done so, the bail will not be liable for the penalty for which he bound himself, but where he dies

the surety,—he is entitled also to call upon the other; and he may, if he pleases, call upon both." (The Hedaya, XVIII-1.) The surety is bound even if the amount of the debt be uncertain, and he cannot allege this by way of defense. "Bail for certain or uncertain property is lawful, because bail rests upon a broad foundation, and a small degree of uncertainty in it is therefore of no consequence." (The Hedaya, *loc. cit.*)

Under our rule, where an obligation is assumed by two or more persons, the legal presumption is that they are jointly bound, but to establish a several liability there should be an explicit statement to that effect. The creditor cannot bring an action against certain of the parties to the exclusion of others, but must sue each separately, or all together. As in the civil law, a promise by implication exists that each surety is liable for his share of the debt, and has a right of action against the principal, as well as an indisputable claim for contribution against his cosureties. These provisions have been modified to a certain extent by the legislation of some of our states.—Ed.

after the expiration of the first term he will be bound to pay said penalty. And if a person becomes bail for another, not binding himself under any certain penalty, but only assuming the obligation to produce the party in court on a day which is designated; and if on that day he does not do this, the court can sentence him to pay a certain sum of money by way of penalty, according to its discretion. If it can be positively ascertained that the bail acted fraudulently, and could have produced the party in court and did not do so, the judge can then impose a greater penalty than he could otherwise have done.

We also decree that where anyone becomes bail for another in order to produce him in court, not indicating within what time, and where no instrument is drawn up in writing; and the party who accepts the security does not demand that the bail produce the party within two months, the bail will be released after that time, except when the security is given in some case which concerns the king or a council, or where some public document had been drawn up with reference to it. Where the security is given in any of these ways it lasts for three years, and if within the three years no demand is made upon the bail to produce in court the party for whom he became surety, from that time forth he will be released, and no compulsion can afterwards be employed against him on that account.

LAW XX.

Concerning Property Where One Man Directs Another to Do Something for the Former's Benefit.

Men sometimes, by the direction of others, perform certain acts by reason of which each becomes liable, not only the party who performs the act but also the other who directs it to be done, which is another kind of obligation that resembles suretyship. This can take place in five different ways. First, where the order is solely for the benefit of the party who directed the act to be performed. This would be the case where one man orders another to collect everything which he has in a certain place; or directs him to purchase something; or to perform some particular act; or to become his surety; or asks him to do something else of this kind. If the party directed to do any of these things accepts, he is bound to comply; and if he pays anything, or delivers anything, or expends anything in carrying out said direction, the party by whose order he did this is bound to reimburse him for it. We also decree, that where the party who receives the order commits a fraud by not carrying out his agreement; or through his fault the other party is injured, he is bound to pay him all damages sustained by him on this account, for men accept directions of this kind from one another for the purpose of doing favors, and not to cause injury.

LAW XXI.

Where Anyone Orders Some Act To Be Performed Solely for the Benefit of a Third Person, or for His Own Benefit, or for That of the Other Party.

Where one man directs another to perform some act which is not for the benefit of the party who directs it to be done, nor for that of the party who receives the order, but for the advantage of a third party; this is the second way which we mentioned in the preceding law; as, for instance, where the party says; "I direct you to take charge of the property which So-and-So has in such-and-such a place, or that you purchase it of him, or that you perform such-and-such an act for him, (designating it specifically) or that you become his surety;" or where he directs him to do something else of this kind. Where the party who is directed to do this accepts, in order to do a favor to, or show his affection for the party who asks him, he should endeavor to perform the

act well and faithfully as far as he can do so; and if he gives, pays, or expends anything on account of said request, the party who made it is bound to enable him to recover it.

Where the third party sustains any injury on account of the benefit accruing to him who made the request, or through the fault or fraud of the person who agreed to it, he can present a claim for the same against the party who directed the act to be performed, and the latter will be bound to make reparation for the same; but whatever amount the party who made the request pays on this account, he can demand of him who accepted the request, and the latter will be obliged to pay him, since it happened through his fault or fraud. The third kind of a request is, where one man asks another to do something for his own benefit, or for that of some third party. This would be the case if he should say; "I request you to collect the property which I and So-and-So have in such-and-such a place; or to buy such-and-such a vineyard; or to do such-and-such a thing for me and for him; or that you become surety for us;" or where he orders him to do something else of this kind. Where the party who is asked to do this accepts the request, he is bound to carry it out well and faithfully; and if he pays or expends anything on account of the same, he who ordered it to be done is bound fully to reimburse him for the same. Moreover, the other party mentioned in the request must also pay his share, if what he expended in this way enured to his benefit. Where the party who accepted the request committed any fraud in performing what he had to do, or in making his collections, or through his fault any injury or loss resulted, the party who made the request is bound to pay for it.

LAW XXII.

Where One Man Directs Another to Perform Some Act for the Benefit of Both.

A request can be made to do something as a favor to, and for the benefit of the party making it, as well as of the party who grants it; and this is the fourth way which we referred to above. This would be the case where some one needed maravedis, and asked or directed a Jew to give or loan said maravedis, for interest, to himself or to his steward or agent. A request of this kind is for the benefit of the party who asks it because he profits by the use of the maravedis with regard to those acts which he orders his steward, or his agent to perform. It is also for the benefit of the party who grants the request, because it gives him a profit on maravedis which he lends, and therefore we decree that he who directs this to be done shall be bound to pay the maravedis, along with the interest, to the party who grants his request; for, since his steward or his agent received them by his direction, he is just as responsible as if he received them himself. The fifth kind of request is, where one man directs another to perform some act or to pay something, solely for the benefit of the party who receives the request and of another. This would be the case where someone directs another party to loan his maravedis, for interest, to some third person, mentioning him by name. In a case of this kind, we decree that where the party who loaned the maravedis cannot collect them from the person who received them, he can do so afterwards from the party who asked that they be loaned. This same rule will apply where some person directed another to loan a certain sum of maravedis to a third party, without interest, or any other profit which he might expect to obtain from the loan.

LAW XXIII.**Where One Man Directs Another to Do Something for the Benefit of the Party Who Receives the Request.**

It sometimes happens that another party is requested to do something solely for the benefit of himself. This would be the case where anyone says; "I advise you, or I direct you, to buy vineyards, or lands with the maravedis which you have;" or where he directs him to buy or improve some other property of this description. Where this is done by the advice or the direction of another, even though said party may suffer injury through said advice or direction, he who gave it will not be bound to make reparation for the same, because a direction like this is rather advice than a request. The party to whom it is given should consider whether or not it is for his benefit before he does it; for no one is bound through compulsion to accept advice which another gives him if he does not desire to do so; and therefore it should not be to the advantage of the party who gave it, except where it is positively ascertained that a request or advice of this kind was made or given maliciously, or for purposes of deception, for, in such a case, the party would be bound to make reparation for the injury received on account of said deception.

LAW XXIV.**How a Direction Should Be Given.**

The direction and request which men communicate to one another and concerning which we spoke in the preceding laws, can be given and made in several ways; for this can be done in the presence of those who direct the act to be performed, and of those who receive the request. Such directions can also be made by means of letters, or by well known messengers, even though the parties who direct the act to be performed or those who receive the order, are present. They can also be made upon a certain day, or under a condition. They are made on a certain day when one party asks another, orally, by letter, or by messenger, to give some person food and clothing before a specified time. They are made under a condition when a person says; "If such-and-such an event takes place give So-and-So so many maravedis, or such-and-such an article." The aforesaid requests which we have mentioned up to this point, can be made by one man saying to another the following words; "I ask, or I order, or I request that you pay so many maravedis, or that you perform such-and-such an act, or that you become my surety." By means of any words of this kind or others similar to them, through which it may be understood that the party who makes the request does so with the intention of binding himself; the request will be valid and the party who makes it will be bound to the person by whom it is received. If it should happen that anyone, after he has made a request in terms such as we have mentioned above, attempts to say that he did not do so with the intention of obligating himself he should not be heard, except where he is able to prove by persons in whose presence the request was made that it is as he says, and that he did not do this with the intention of making himself liable, but in some other way; which would be difficult to prove.

LAW XXV.**Which Expenses a Party Incurs on Account of the Request of Another Can Be Recovered by Him, and Which Cannot.**

Where one man accepts from another a request to do some lawful act, and he spends any money on account of it, the party who made the request is bound to pay him. But where he requests him to commit theft, robbery,

homicide, or to burn houses or growing grain, or asks him to commit some other unlawful act against another party; although the party accepting the request may, for that reason, make some expenditure of money, he who requested him to do this will not be bound to reimburse him, although both of them must pay the third party for whatever injury or wrong he suffered, to the extent that he sustained loss or depreciation of property because of said request.

Moreover, we decree that where a minor under twenty-five years of age asks another person, no matter who he may be, to become surety for a concubine, or some other bad woman, with whom he has to do, that he may give her clothes or jewels, or anything else; although the party to whom the request is made may, in consequence of it, spend some money, the other will not be bound to reimburse him if he does not wish to do so because an expense of this kind is incurred to the injury of the minor, and for an improper and evil purpose.

LAW XXVI.

Where One Man Takes Care of Another's Property.

Men sometimes leave their country and their homes to travel in other lands, and, through neglect or forgetfulness, do not place their houses or their property in the hands of any one to be taken care of, or cultivated; and it then happens that persons who are residents of those localities, on account of either the relationship or friendship which they bear to the absent parties, voluntarily, and without the request of the others, endeavor to care for and watch over said lands and other property, thus abandoned, as it were, and spend their own money for that purpose, and occasionally gather the crops and make use of them. We also decree that when anyone spends any money for the benefit or improvement of the lands or property of another party, in his name, that the owner of said land is just as much bound to reimburse him for it as if it had been done under his own orders. The other party is also bound to pay the owner of the land for the crops which he gathered, over and above the expenses incurred for that purpose, rendering him a true and just account of the same.

LAW XXVII

Where Men Take Care of the Property of Kings, or Minors, or Common Councils, or Perform Some Service for Them Without Their Orders.

If the guardian of a minor, or the agent or steward of the king, or of any other man, or of any common council, who has charge of, or whose duty it is to attend to, or collect property belonging to any of the aforesaid persons, should happen to go somewhere and leave said property, which it was his duty to care for and protect, in the charge of anyone; or where he remains in the neighborhood but is negligent in caring for said property, and some friend or relative of his, desiring to protect him, exerts himself to attend to the same; and, while thus engaged, incurs any expense for the benefit of any of the aforesaid owners the party who had charge of it, or the one to whom said property belongs, will be bound to reimburse him for the entire amount. We also decree that the person who exerted himself to take care of, or attend to the property aforesaid, shall be bound to render an account to the party who has charge of it, or to its owner, delivering all the crops of the same, after deducting the expenses, as we stated in the preceding law.

LAW XXVIII.**What Difference Exists in the Expenses Incurred by Men with Reference to the Property of Others, Without the Order of its Owners.**

A distinction exists in the expenses which men incur in caring for the property of others without their orders, for there are expenses of this kind which, when they are made, appear to have been incurred for the benefit of the property and it afterwards turns out that they are not. There are also others which are in the beginning, as well as afterwards for the benefit of the property. There are others which are necessary and by all means should be incurred, and if they are not, the property will be lost or deteriorated. We also decree that expenses of the description aforesaid, incurred by anyone in good faith, and contracted in taking care of the property of another man who was not a minor under the age of fourteen years, in any way whatsoever, can be recovered from the party who owns the property. Where disbursements made for the benefit and care of a minor, are necessary, in the beginning and afterwards, as aforesaid, the party who made them can recover them from said minor; where they are made for purposes which seem to be to his advantage in the beginning, and afterwards said advantage was not apparent, or did not last, as stated in the beginning of this law, in this case the minor will not be bound to refund said disbursements, but the party who has charge of his property must pay them himself.

LAW XXIX.**Those Who Take Charge of the Property of Others with Evil Intentions, Cannot Recover the Disbursements Which They Make.**

Men may be influenced by good intentions in taking charge of the property of others, with the desire of pleasing its owners, and not through any wish for profit, or to steal anything they have control of. For which reason we decree that where it is absolutely known that anyone is influenced by bad intentions in doing this; and it does not appear that he took care of, or improved any of the property of which he had supervision, when he could have reserved the expenses he incurred while in charge of said property; he shall in this case lose said expenses, and the owner of the property shall not be obliged to refund them to him. Where, however, it is ascertained that while in charge of said property, he obtained profits sufficient to pay said expenses, and that, in addition, a part of the profits remain for the owner, he will then be entitled to retain said expenses. Moreover, we decree that where a party has charge of property and it is injured or deteriorated in any way, he shall make good all that is lost or deteriorated, no matter how this may have occurred. This is the case because he was induced to take charge of said property, in bad faith, and with the intention of stealing, or of committing some fraud.

LAW XXX.**Any Damage or Loss Sustained by the Property of Another Party, Through the Fault of Him Who has Charge of it, Must Be Borne by the Latter.**

Every man should take care of, and attend to the property of others loyally and in good faith, and endeavor to exert himself for that purpose. He should do this in such a way that none of said property may be lost or deteriorated through any fault or fraud of his, and where any property is lost or deteriorated through any fault or fraud committed by him, he is bound to pay for the same. But where he was induced to take charge of the property aforesaid, for the reason that he found it neglected and no man in the world was paying any

attention to it, and exerted himself for this purpose to prevent the injury of the owner of the same, or of the persons having it in charge; in this case he will not be bound to pay for what was lost through his fault, except where it was proved that said loss occurred through some fraud which he committed.

LAW XXXI.

Concerning Property Which Men Take Charge of, Thinking That it Belongs to Some Friend of Theirs, While in Fact it Belongs to Someone Else.

Where a man thinks he has charge of the property of a friend of his, and this is not the case, but he is taking care of the property of someone else; if he be ignorant of the fact, the party to whom said property belongs is bound to refund to him all disbursements which he makes in taking care of said property, just as if he had exerted himself to do this in his name, and on account of the affection which he bore him. Moreover, we decree that the party who exerts himself to take care of the property of another, as aforesaid, is bound to render an account of the same to the person to whom it belongs, and to be responsible for the crops which have been gathered from it, after deducting the expenses, just as if the owner himself had placed him in charge of said property.

LAW XXXII.

Concerning Payments Received or Made By One Person in the Name of Another.

Where one man receives maravedis or any other property in the name of another, whether they are owing to the party in whose name he received them or not, and the person in whose name he receives them ratifies the transaction after he learns of it, the other party is bound to give him what he received in his name; and if he incurred any expenses in caring for said property or transporting it, he can recover it from the party in whose name he received said property. Where the property received in this manner is a debt, as soon as the other ratifies the transaction, as aforesaid, the debtor will be released from the entire debt which he owed. Moreover, we decree that where one man pays a genuine debt which another man owes, as soon as he pays it the party who owed said debt becomes free and released from all liability, although he may have paid it without his direction. The party for whom this payment is made, is, however, bound to refund to the other what he paid for him, just as if he had paid it by his order.

LAW XXXIII.

A Person Who Has Charge of the Property of Another Should Not Purchase Anything, or Perform Any Acts to Which the Owner of Said Property Is Not Accustomed.

A person who exerts himself to care for the property of another should do so diligently and in good faith, and especially when he does this without the order of the owner of the same; being careful not to purchase anything or to perform any act which the owner of the property of which he has charge was not accustomed to purchase, or to perform. For, if he should act contrary to this, and any injury or loss results from his purchase or his acts, although this may happen through accident or in any other way whatsoever, he and not the owner of said property will be entirely responsible for the same. We also decree that if any profits belonging to the owner of the property should be made, the party will then be entitled to recover the expenses incurred by him in caring for said property.

LAW XXXIV.**A Party Who Has Charge of the Property of Another, Which Has Been Committed to His Charge by the Owner, Should Be Very Diligent in Keeping Said Property in Order.**

Where a man consents to take charge of the property of a friend of his, through the bond of friendship or relationship which exists between them, and while intending to do this well and zealously, another party comes to him and says: "I wish to take charge of this property," and he who had charge of it in the first place surrendered it for a reason of this kind; the last person is bound to take charge of it in the same way that the first intended to do, so that neither by his fault, fraud, nor negligence, any of said property may be lost or depreciated in value. And if he should violate this law, he will be bound to make good the amount of the loss or depreciation resulting from any of the three causes aforesaid.

LAW XXXV.**A Person Who Is Induced Through Pity to Rear a Minor, and to Take Care of His Property, Cannot Afterwards Demand the Expenses He Incurred for This Purpose.**

A man is sometimes induced by pity to take an abandoned minor to his home and furnish him with whatever he needs, expending his own money in caring for his property, so long as he has him in his house; and it happens afterwards that he desires to recover what he disbursed in this way out of the property of the youth. We decree that he cannot do this, for, since he was induced to bring up said boy on account of pity and mercy, it is understood that he did so for a divine reward, and for this reason the youth will not be obliged to pay him anything, either for the benefits which he conferred upon him, or for the disbursements which he made in caring for his property, although he will be bound through his entire life to show him honor, kindness, and reverence in every way he can.

LAW XXXVI.**A Mother or a Grandmother Can Recover the Expenses Incurred by Them in Rearing Their Children and Grandchildren, and in Taking Care of Their Property.**

When a mother or grandmother has children or grandchildren under her control, after the death of their father, and also has charge of their property, and provides them with drink, clothing, food, shoes, and other necessities; and where they have sufficient property of their own for their support, the expenses incurred by the mother or grandmother on account of said children or grandchildren, can be recovered by them out of the property of the latter. But where the children have no property of their own with which they can be supported, then the mother or grandmother should take care of them, being influenced by nature to do so, and not for the purpose of recovering any disbursements which she may make on their account. Where, however, the children are so wealthy that they have abundant property to live upon, and said property was not under the care of their mother or grandmother; and while they were under their control they provided them with everything necessary for their support, declaring that they wished the expenses that they incurred on their account to be paid out of their property; under these circumstances they have the right to recover what they expended, and to have it

paid out of the property of said children. But where they did not make this statement publicly to them, as aforesaid, they cannot then recover the expenses which they incurred in this way.

LAW XXXVII.

Whether a Stepfather, or Any Other Man Can Recover the Expenses Incurred by Him in Taking Care of the Property of His Stepson, or Any Other Stranger, While He Is Under His Control.

Where a stepfather has a stepson in his house,, and furnishes him with food, drink, and other necessities, stating publicly that the expenses he incurs on his account are made with the intention of recovering them; in such a case he is entitled to be reimbursed from the property of the boy, if he has any. But where the boy is so large that he makes use of his services, even though he makes the statement publicly as aforesaid, he is not entitled to recover the expenses incurred on account of his support; for it is but proper that the services of the boy should be set off against the expenses incurred by reason of his person. But where any expenses were incurred in taking care of his property, and which were for its benefit, he can certainly recover the same. What we stated in this law concerning a stepfather, is also understood to apply to all other persons who support or take care of strange children, or who have charge of their property.

TITLE XIII.

Concerning Pledges Which Men Frequently Take in Order That They May Be More Certain That What Is Promised To Be Done for Them, or Paid Them, May Be the More Surely Done or Paid.

Men frequently take pledges in order to be more certain that what is promised to be paid them or done for them may be the more surely done or paid. Wherefore, since in the preceding Title we treated of Suretyship given for this reason, we desire here to treat of pledges, and we shall explain what a pledge is; how many kinds there are; what property can be given in pledges; in what way this can be done; who can pledge property; what contracts can be entered into with regard to pledges, and what contracts cannot; what rights a man obtains in property taken as a pledge; when property pledged should be returned to its owner; for what reasons the obligation of a pledge is released; and we shall also state how and when pledges can be sold or transferred.

LAW I.

What a Pledge Is, and How Many Kinds There Are.

A pledge, properly speaking, is something which a man places in the hands of another as security, giving him possession of the same, and it especially applies to movable property; but according to the broad interpretation of the law, every description of property, whether movable or immovable, which is placed in the hands of another party as security, can be called a pledge, although it may not be delivered to the party to whom it is pledged. There are three kinds of pledges. First, that which men voluntarily deliver to one another, giving them control over their property by reason of something which they should give or do. Second, when judges order the property of a party to a suit to be delivered to his opponent in default of answer, or on account of disobedience, or because of a judgment rendered against him, or to obey an order of the king. Pledges of this kind are made, as it were, by compulsion. The two kinds of pledges aforesaid are given orally. The third kind is that which is given silently, and nothing is said about it, as, for instance, where the property of the husband is liable to the wife by reason of her dowry, and other property is encumbered in favor of the king on account of rents or taxes collected for him; and whatever applies to all other cases of this description treated of in the laws of this Title.

LAW II.

What Property Can Be Given in Pledge.

Everything can be pledged, whether it is in existence or about to be, as, for instance, the offspring of a female slave, the increase of beasts, the fruits of trees, the crops of land, and every other kind of increase of every description whatever which men possess, not only those which are corporeal but those which are not. Where any one gathers any of the crops aforesaid, the party who takes them in pledge is bound to deduct what he lent on said property and deliver it to the owner of the latter. We also decree that all debts which are owing to one man can be pledged to another, together with all the rights which he may have in them, and the party who takes them in pledge can demand them in and out of court, just as the party to whom they are owing and who pledges them to him could do.¹

¹There are two kinds of pledges recognized by the Roman law, the *pignus*, where the article was placed in the hands of the creditor and full power was given him to realize on it to the amount of his claim, in

LAW III.

What Property Should Not, and Cannot Be Given in Pledge.

Men cannot receive as pledges, holy, sacred, and religious property, as, for instance, churches, monuments, and other things of this kind, nor can they be encumbered, except in certain cases, as stated in the Title treating of the property of the Holy Church, in the First Partida of this our book. We also decree that a freeman cannot pledge himself, but that anyone who accepts him as a pledge shall lose everything which he loaned on him, and must also pay an equal amount of his own property to him, or to his relatives in case he is not living. There are, however, two cases in which a freeman can be taken in pledge, and be the subject of an obligation of this kind. First, where someone is a captive, and gives himself in pledge to another party in order to be released from captivity. The second is where a man pledges his son through stress of hunger.

Moreover, we decree that a freeman can be given as a hostage, where parties make peace with one another, or in a truce, or where a truce is negotiated, or for any other security, in instances like this. And, although the agreement by which a party was pledged in this way, may not be observed, nevertheless, they should not kill, wound, or inflict any penalty upon him, or do him any harm whatever; but he can be held as long as it is considered proper, or until the time agreed upon has elapsed.

LAW IV.

Property Employed Only for Cultivating Land Should Not Be Given in Pledge.

We forbid that either oxen, cows, or other animals of husbandry, or ploughs, or implements, or any other tools necessary to cultivate land, or slaves employed especially in agriculture be taken in pledge. And we also forbid a judge, or any other man to take or deliver said property, and, if he should do so, he shall be obliged to pay the owner of said property, for all damages and losses which he may suffer on this account.

LAW V.

What Property Cannot Be Encumbered Although the Owner May Place All His Possessions in Pledge.

When a man pledges all his property, there are certain kinds which cannot be encumbered in this way. These are the following, namely; a concubine which a man keeps publicly in his house and any children he may have by her; and any servants, or male or female slaves which he employs to serve

default of payment; and the other the *hypotheca*, by which a right in his debtor's property was conveyed to him as security for an obligation, but of which he could not avail himself without an action at law. The latter was generally employed with reference to the encumbering of real estate, and corresponded to our mortgage, but either species of lien could be imposed upon land or chattels, the distinction being entirely dependent upon delivery of possession. A special agreement was necessary to enable the creditor to make use of the articles pledged, or retain the rents or profits of the same. It might also be stipulated that where the debtor failed to discharge his obligation at the appointed time, the pledge, regardless of its value, would absolutely belong to the creditor, but this provision, long in force, was at last repealed, as being productive of gross abuse and intolerable hardship. It will be noted that a contract of this kind is void by Law XII of the text.

The civil law also permitted the acceptance, in pledge, of property of every description whatever, corporeal and incorporeal, whether in possession or expectancy. *Creditor pignori accepit a debitore quidquid in bonis haberet, habiturusve esset.* (Corp. Jur. Civ. Dig. XX-I-34-2.)

The Mohammedan rule is not so broad and comprehensive as the Roman, for, according to it, the pledge must, in no way, be indefinite, but susceptible of actual seizing, and it must remain constantly in possession of the creditor, otherwise the transaction is illegal. (The Hedaya, XLV-III-I-2.)

At common law, it was absolutely necessary that the pledge be delivered, but while possession passed to the creditor the ownership did not. The weight of authority is still in favor of this doctrine, which is modified to some extent where the property pledged is represented by documents or certificates, which may be deposited, or temporarily transferred as collateral security, the property itself not being capable of actual delivery.—Ed.

him, and protect him, and bring up his children; and such articles as he needs every day for his personal service or that of his family, as, for instance, his bed, that of his wife, and all linen and kitchen utensils necessary for the services of the table, his arms, and his horse. All other property which he had at that time, and any he expects to have subsequently, will be encumbered by reason of a pledge of this kind, except that aforesaid, or any other similar to it which he possesses.¹

LAW VI.

In What Way Property Should Be Given in Pledge.

Property can be pledged where the owners of the same are present as well as the others who are to receive it, whether said property is in that place or elsewhere. Property can also be pledged by messengers or by letters, even if one of the parties is not present, by means of a written document, or without it. Moreover, we decree that when any person pledges property he should designate it by its name, or by certain marks, or by measures, or in any other way whatsoever, so that it may be certainly known what the property pledged consists of.

LAW VII.

Who Can Pledge Property.

Persons who have power to dispose of property because they are the owners of the same, can place it in pledge with others. We also decree that where persons have any rights in property they can pledge it, although they may not be its owners. We also decree that where anyone hopes to acquire the ownership of any property, and pledges it before he obtains said ownership, and, after he has pledged it in this way, acquires the ownership of the same; the said property will remain encumbered, just as if he had had the ownership and the possession of the same at the time he pledged it. We also decree that where one man pledges to another property belonging to a third party, not having possession of the same, and he to whom it was pledged knew that it belonged to someone else, even though, after this, the man who pledged it obtains its ownership, he will nevertheless have no right to it which would entitle him to demand it of the party who received it by way of pledge. Where, however, the party to whom it was pledged happens to be in possession of said property, he can then hold it in pledge until he recovers what he had lent on it. But if when he received the property in pledge, he believed it belonged to the party who delivered it to him, and the other afterwards obtains the ownership of it; when this takes place, he has the right to demand it of anyone who has possession of said property, just as if the other party had had the ownership and possession of the same when he pledged it.

LAW VIII.

An Agent, a Steward, or the Guardian of a Minor, Can Pledge the Property of Those They Represent.

The agent or steward of any person has the right to pledge any of the property of the party whose agent or steward he is, without his knowledge or order; if the maravedis which he received on the pledge were obtained

¹ The civil law forbade that clothing, implements of agriculture, tools necessary for the exercise of a trade, slaves daily employed, and concubines or their children be pledged. (Corp. Jur. Civ. Dig. XX-1-6, 7, 8.) Our laws do not recognize any restriction as to articles, however indispensable to the occupation of the owner, being deposited as security for money advanced.—Ed.

for the benefit of the owner, and if the property passed under the control of the party who received it in pledge, the latter can then retain the same until he recovers the maravedis which he lent on it. But where the property does not come under his control, although he can bring an action for the maravedis against the owner of the property pledged, if they were obtained for his benefit, as aforesaid; he cannot, nevertheless, demand that the property held by him in pledge be delivered to him.

We also decree that where a party has charge of the property of a minor, and it becomes necessary to pledge any of said property for the benefit of the person of whom he has charge, this can be done with the movable property, where the maravedis received on the pledge are all expended for the benefit of the boy; but immovable property cannot be pledged without the consent of a judge. Where, however, a guardian pledges any of his own property in order to pay a debt owed by a minor, or for any other purpose, the pledge will be valid as against the guardian, although the boy will not be bound to pay the debt because it was not contracted for his benefit.

LAW IX.

How Property Belonging to Another Person Can, or Cannot Be, Pledged.

Property belonging to someone else cannot be pledged, except by the order of the owner. Where, however, anyone pledges such property and the owner, after he is informed of it, gives his consent and ratifies the transaction, or if he was present when the property was pledged and kept silent and did not object, the pledge will then be valid, just as if he himself, or someone else by his order, had given it.

LAW X.

How a Man Can, or Cannot Pledge Property Which He Placed in Pledge With Another Party.

When a man pledges his property to another, and after this desires to pledge the same property a second time, he cannot do so without the knowledge and order of the party to whom he pledged said property in the first place; except where said property is worth so much that it will be sufficient to pay both debts, for then he can pledge it, without his knowledge, for the amount of its value over and above what he obtained on it. We also decree that where one man has pledged property to another for all that it is worth, and, after this, pledges the same property to a third party, without the knowledge and order of the party who holds it in pledge; he will be bound to deliver some other pledge equal in value to what he received from him to the second man to whom he pledged said property. And, in addition to this, the judge of the district, in his discretion, can inflict a penalty upon the party for the fraud which he committed for pledging one thing to two men for more than it was worth. We decree that the same rule shall be observed when one person pledges the property of another, and the party who takes it in pledge is not aware of this.

LAW XI.

When No One Should Pledge Property Without an Order of Court.

No one can seize the property of another, without an order of the judge or the magistrate of the region except where the party made a contract with his creditor authorizing him to do this himself, without an order of court.

Where anyone violates this law we deem it proper and we command that he return the property pledged to its owner, and pay the amount of the debt to the king, and, moreover, that he lose the claim which he had against the party whose property he seized in this way.¹

LAW XII.

What Contracts Can Be Made With Regard to Pledges, and What Ones Cannot.

Any contract, not contrary to law or good customs can be made with respect to property which men place in pledge, but all others are invalid. Moreover, we decree that where a man pledges his property to another by a contract of this kind, speaking as follows: "If I do not redeem this pledge by such-and-such a day, I consent that it shall be yours from that time forward, in consideration of what you lend me, or said property will become your purchase;" a contract of this description shall be void. For if such an agreement were valid, men would be unwilling to accept pledges on any other terms, and very great injury would result to the country, because when persons are in dire need they would pledge property for whatever would be lent to them on it, and would lose it by an agreement of this kind. But where the agreement was made in such a way that if the party who pledged the property did not redeem it before a certain day, it could be sold and purchased by the other party, for such a price as it would be appraised at by reliable men; we decree that such a contract shall be valid, as we stated in the Title concerning Promises, contracts and agreements in the law which treats of this subject.

LAW XIII.

What Difference Exists Between Pledges Given by Judges, and Others Voluntarily Delivered by Men to One Another and What Rights They Obtain in Them.

A distinction exists between property which men give in pledge to one another, by common agreement, on account of something which they are to pay or do, and other property ordered to be given in pledge by judges, in order to have their decisions carried out. The property ordered to be placed

¹ Under the Roman system, as soon as the debt was due, the creditor himself had a right to sell the property after having served notice on the pledgor three times. The latter was, however, allowed two years in which to discharge the debt and redeem the pledge. The French law does not permit the appropriation or alienation of an article which has been pledged without an order of court; in the latter case this must be followed by an appraisement and a sale at auction. Any clause in the contract authorizing the creditor to take possession of the pledge is absolutely void. (Cod. Civ. de Fr. III-XVII-1, Art. 2078.)

In Spain, also, the sale must be made at auction, after the owner of the pledge has been notified to appear and redeem it; proceedings having been previously instituted before a notary. "*El acreedor á quien oportunamente no hubiese sido satisfecho su crédito, podrá proceder por ante Notario á la enajenación de la prenda. Esta enajenación habrá de hacerse precisamente en subasta pública y con citación del deudor y del dueño de la prenda en su caso.*" (Cod. Civ. de Esp. IV-XV-2, Art. 1872.) When the property is not sold the first time, a second sale is made with the same formalities, and if the article still remains unsold it can then be taken by the creditor in full satisfaction of his claim.

Moslem jurists are not altogether in accord on the point as to whether the creditor has a right to dispose of the pledge after the debt is payable, but it is conceded by eminent authority that he has: "The claim of the pawnee is connected with the substance of the pledge, as a satisfaction for his claim--in this way, that he may sell it, and thereby obtain a discharge, it being until such sale a trust reposed in him and the property of the depositor." (The Hedaya, XLVIII-I.)

By the common law, where the obligation was not discharged by the stipulated time, the creditor was compelled to apply to a court for an order to dispose of the pledge. Where no date was fixed, the pledgor could redeem it during his lifetime, unless notified to do so previously, and when he received no such notice, his representatives inherited his right of redemption. No expense could be incurred for the benefit of the property pledged, nor had judges power to allow them, where no agreement had been entered into authorizing them to be collected; which differs from the Roman rule, by which also the pledgee could be forced to sell the pledge, which could not be done at common law.

Under the English and American procedure, as the article pledged is considered collateral security, the creditor can sell it without judicial authority, after due notice to the pledgor. He can also bring an action against the latter for the collection of his claim, irrespective of the disposal of the pledge. Special statutes have been enacted in all the states guarding the rights of pledgors, and defining the responsibilities of pawnbrokers.—Ed.

in pledge by judges, is not encumbered until it is placed in the possession of those to whom delivery is ordered to be made. For property given in pledge by men to one another, as aforesaid, as soon as they come to an agreement is encumbered, although the parties who take it in pledge may not have possession of it. With respect to pledges ordered to be delivered by judges, as aforesaid, if the owner of the same pledges them to others before the judge delivers them to those to whom he has ordered possession to be given, we decree that in this case the party to whom the property was last hypothecated has a better right to it than the other party to whom the judge ordered it to be delivered, and this was not done.

LAW XIV.

What Rights a Man Obtains in Property Which Is Encumbered on Account of Being Pledged.

Where a man pledges a deed of gift or purchase of any of his landed property, or of his house, it is understood that he pledges the property or the house with reference to which the deed was made, just as if he had given possession of said property to the party to whom he hypothecated it. We also decree that after the property has been pledged, the party who received it for this purpose can demand of the person who pledged it, or of his heirs, to deliver it to him. If the party who pledges said property to anyone, before he delivered possession of the same to him, should give, sell, pledge, or transfer it to another by giving possession of it; the person to whom it was pledged in the first place can sue the party who pledged it to him for all that he lent him on said property; and if he can recover the amount he should leave in peace the other who is in possession; and if he cannot collect or recover the money from the party who pledged it, he can then demand the property pledged of whomsoever he finds in possession of the same, and not before; except where the party who pledged said property sold or transferred it, after legal proceedings were instituted with regard to it by the party to whom it was pledged. In this case he will have the choice at once of demanding the debt of the party who pledged it to him, or of demanding the property of the party whom he finds in possession, whichever he may desire to do.

LAW XV.

The Rights Which a Man Has in Property Which Was Pledged Are Saved Even Though Its Condition May Be Changed, or It Be Improved.

Where property changes its condition, after it has been pledged, as, for instance, where a house is demolished, or where the land is uncultivated and young vines are planted on it, by the owner; or if he plant trees there; or where the property is altered in any other way like this; the party who holds it in pledge still retains his rights in said property, and where he who is in possession of the same, as aforesaid, is not its owner who holds it in good faith, and thinking that it is his own makes improvements in it; in this case the party to whom it was pledged cannot dispossess him of said property until he pays him the expenses which it plainly appears he incurred for the benefit of the property pledged.

Moreover, we decree that if the party who holds the property in pledge improves it in any way, or it is accidentally increased in area, as, for instance, where it consists of a field, a vineyard, or an orchard on the bank of some river, and land was added to it, or its area increased by an inundation of said stream; such an increase or improvement happening in any of these ways to

the property given in pledge enures to the benefit of the party who holds it, and he has the same rights in it as in the other property which was pledged in the first place. He must, however, return all of said property to the party who pledged it if he pays him the debt and his expenses, where he incurred any on this account.

LAW XVI.

What Rights a Party Who Holds Property in Pledge Obtains in Any Fruits Arising From It.

If a party who pledges his land and still retains possession of it, sows it; or if the property becomes pregnant where it is a female slave, or any other kind of cattle which conceive and bring forth; even though he afterwards sell it or pledge it to another party, or dispose of it in any other way whatsoever, we decree that the increase of any of the property aforesaid, shall be deemed pledged to him who held it, just as the property itself was pledged to him. But where the party to whom said property placed in pledge is transferred, and he, being in possession of the same sows it, or it of itself yields some other increase; we decree that, in this case, the increase shall not be pledged to him to whom the property was first encumbered.

LAW XVII.

What Rights a Man Has in Property Pledged Under a Condition, or for a Certain Time.

Where one man receives property of another in pledge, under a condition or for a specified time, he cannot demand that the said property be delivered to him in pledge until the condition is complied with, or until the day which is designated arrives. If, however, the party who received the property in pledge is afraid that he who pledges it will leave the country for another, he can demand that he deliver it to him, or give him good security that the condition will be complied with at the time, or that the said property will be delivered to him when the appointed day arrives.

LAW XVIII.

What a Party Who Says That Property Is Pledged Must Prove When He Who Has Possession of Said Property Denies This.

Where one man sues another for some property in court, alleging that said property which he holds was given him in pledge, naming the party who pledged it; and the one who is sued denies that this is the case, or states that the party mentioned as having pledged it to him had no authority to do so; the plaintiff will then be obliged to prove two things. First, that the property was pledged. Second, that at the time it was hypothecated it belonged to the party who said that he pledged it, or that he had authority to do so; and if this is proved the property which he claims as having been pledged should be delivered to him.

We also decree that where a man has possession of property, and another demands it of him, stating that it has been pledged to him, if the latter who is in possession of the same is willing to pay at once what the party who makes the demand is entitled to, the other should accept it, even if he does not wish to do so; for, after the debt incurred with regard to the property has been paid to him, he has no other right in the property; but we

decree that the right which he had in said property, by reason of said debt before it was paid, shall be transferred to the other party who paid it, if he requests it.

LAW XIX.

Where Property Given in Pledge Is Removed, Lost, or Diminished in Value, After Suit Has Been Brought for It in Court, How It Should Be Returned or Paid For.

When one man has property in his possession and another declares that said property which is pledged to him is his, and, after he has proved this, the possessor of said property fraudulently removes it, saying that he cannot have it; the judge should then order the party who makes the demand to swear how much damage or loss he has sustained by reason of the non-delivery of said property; and he should order the other party to pay him this, in addition to the debt which he owed him, according to the amount sworn to. However, the judge should in the first place make an appraisal of the amount of said damage or loss before he accepts what is sworn to by the other party. But where the property pledged is lost through the fault of the person who had possession of the same, and not through any fraud which he committed, he should then not order anything more to be paid than what the party received on the property which was pledged.

Where said property was not fraudulently removed or lost through the fault of the party who had possession of it, but, retaining it, he was unwilling to surrender it; in this case the party who claims it has the choice to make oath, as aforesaid, and have it paid for with all damages and losses, or to petition the judge forcibly to take it from said party and deliver it to him. If the property is situated in such a place that, though the party is willing to surrender it he is unable to do so, he cannot then be condemned in any of the ways aforesaid, since the property was not removed through his fault. Security should, however, be taken from him to produce said property on some day which is designated, and deliver it to the party who held it in pledge, or to pay the claim which the other has on it. We decree that this same rule shall be observed with regard to all the property above mentioned in this law, where the party who pledged said property makes a similar disposal of it.

LAW XX.

Where a Party Who Holds Property in Pledge Loses It, or It Is Depreciated in Value Through His Fault, He Must Pay for It.

Every man who receives property in pledge should use great diligence in taking care of it, so that it may not be lost or depreciated in value, through his fault or neglect; and for this to be well done, he who holds the pledges must not make use of them, or employ them for his own advantage in any way, except where he does this properly, so that they become none the less valuable through such usage. He must also do this with the consent, and by the order of the party to whom said pledges belong; for pledges are principally given in order to furnish security for what is paid on them by those who receive them as pledges, and not to be used by the latter. Wherefore, we decree that if anyone violates this law, and the property is lost or depreciated in value, by its being made use of contrary to the wishes of the owner; or where such damage results in any other way through the fault or negligence of the party holding it in pledge, he will be bound to pay for the same. But where the loss or depreciation of the property pledged is the result of

accident, and is not due to any fault or fraud committed by the party who held it in pledge, he will not be responsible for it, and we decree that the owner shall be obliged to pay the creditor the debt which he contracted on said property. The party who receives the property in pledge should, however, prove the accident by which he alleges it was lost, and, having proved it, he will be released from liability, and be entitled to recover what he lent, as aforesaid; except where the other party to whom the property belonged proves that the accident happened through the fault of him who held it in pledge. For in this case, although he will be entitled to recover his debt, he will also be bound to pay for said property, since it was lost by an accident occasioned by his fault.

LAW XXI.

When Property Which Men Hold in Pledge Should Be Returned to Those Who Pledged It.

When a party desires to recover the property which he pledged, he should first pay the debt which he contracted when he pledged the same. And he should not only pay said debt, but all reasonable expenses incurred for the benefit of the property pledged, to keep it up so that it might not be destroyed or depreciated in value, or for its improvement; as, for instance, if where it is a beast of burden he provides it with barley, and meets the expenses incurred by feeding it, as well as those incurred by shoeing it, or any other things of this kind necessary for said animal; and in the case of a house, he should also pay the party the expenses he incurred in rebuilding it in order to improve it or repair it, that it might not be depreciated in value; or, where it is land the expenses incurred in cultivating it; and he should, moreover, refund any expenses incurred in any of the ways aforesaid, or in others similar to them, deducting from the amount of the debt the value of the crops which the party who held the property in pledge had gathered, or the rent for the house, if he who held it in pledge lived in it. Where the debt and expenses are paid, as aforesaid, he who held said property in pledge is bound to surrender it immediately to the party who pledged the same to him. If he should not surrender said property to him, not alleging or proving in his presence any lawful reason by which he might defend himself from doing so, he must pay for the property along with all damages and losses, and the party who pledged the same should be believed on his oath, not only with regard to the value of said property, but also as to the amount of the damages and losses which he sustained on this account. The judge should, however, estimate the value of the property in the first place, as well as the amount of the damages and losses, and indicate a certain just and lawful amount, according to his judgment, before the party is sworn, in order that the latter may have no reason to swear to an extravagant sum.

LAW XXII.

Where a Party Lends a Man Money on a Pledge, Although It May Be Paid He Has a Right to Retain the Pledge on Account of Some Other Debt Which the Party Owes Him.

Where one man owes another a sum of maravedis on a pledge, and he afterwards contracts another debt with the same party, receiving from him maravedis on a note without any pledge; although he may pay the first debt, if the creditor is not willing to return said pledge until the debtor pays the

other debt he owes on the note, he has the right to retain said pledge, although it was not especially given as security for the debt subsequently contracted.

We decree that this rule shall be observed only with regard to those who contract a debt and their heirs; for, if the owner of the pledge happens to pledge or sell it to another party, while he to whom it was given in the first place holds it, and he to whom it was pledged the second time, or sold, says to the first party "Give me the pledge that So-and-So placed with you, and receive from me what you have loaned on it, because he has pledged or sold it to me;" in a case of this kind the first creditor will be obliged to receive the money lent on said pledge, and to deliver to the other the property, and he cannot avoid doing this although he may say that the party who pledged it with him owes him another debt on a note, as aforesaid.¹

LAW XXIII.

For What Reasons the Property of Certain Persons Is Subject to Encumbrance As a Pledge, Although This May Not Be Especially Mentioned.

Property may be encumbered to another by way of pledge verbally as we have stated above, and also tacitly through the performance of some act. This would be the case where some woman for herself, or through another party, promises to give a dowry to the person she marries; for in this case all her property will be bound to her husband, as also will be that of the party who promised to give the dowry for her, until said dowry is paid; although, when she promised to give it no mention was made of encumbering the property of either of them. Moreover, we decree that the property of the husband is subject to encumbrance in favor of the wife on account of the dowry which he received with her.

We also decree that the property of the guardians of minors under twenty-five years of age, is always encumbered in favor of those of whom they have charge, from the day when their office of guardianship commences until they render an account and statement of the property which they had under their control. We decree that the same rule shall be observed with regard to property of those who receive any of the royal revenues.

LAW XXIV.

The Property of a Father Is Bound by Way of Pledge to the Son to the Amount of Which He Makes a Bad Use of the Property of the Latter, Although No Obligation to That Effect Was Verbally Assumed.

Children have separate property which is their own, and which they obtain from their mother's side. Although property of this description should be under the control of the father, and he can collect the rents and profits of the same, he has, nevertheless, no right to dispose of said property in any way; and if he should do so, his property will, for this reason, be encumbered and pledged to his son after his death, until he receives an equivalent of what his father alienated or wasted. If nothing can be obtained from the estate of the father, because it was so small in amount that it was not sufficient, or because he has pledged it, or neglected it in any way, the son can then claim

¹ The rule established by the civil law, which agrees with that of the *Partidas*, made the property pledged liable for any pecuniary obligation afterwards contracted by the pledgor in favor of the pledgee. This is not accepted by the English and American authorities, according to whom the pledge can only be considered liable for the debt as security for which it was originally deposited. Where, however, a strong presumption arises that a second loan was obtained by reason of the pledge, the creditor will not be compelled to relinquish it until full satisfaction for all claims against the debtor has been made.—Ed.

the property wherever he finds it, and he has a right to recover it. This is understood to be the case when he does not wish to inherit, or receive any share of the estate of his father; for if he should desire to inherit it, he cannot then demand his own property of those to whom his father had disposed of it, as above stated, because he would be obliged to carry out all lawful contracts entered into by his father, and not oppose them after he became his heir.

LAW XXV.

The Property of a Minor Which Is Purchased Is Encumbered in His Favor, and the Property of Those Who Are Bound to Pay Taxes or Revenues to the King, Is Encumbered So Far As Relates to Their Payment.

When any of the property of a minor under fourteen years of age is purchased, said property always remains encumbered in favor of said minor, until the purchase price has been paid to him. We also decree that where anyone is bound to pay tribute to the king, all his property is encumbered in favor of the king until said tribute has been paid. Moreover, we decree that all the property of those who collect the king's taxes; or who make any contract with regard to rent with him, or an agreement of any kind whatsoever for the collection of his duties, as aforesaid, is encumbered in his favor until the contract which they entered into with him has been complied with. It is, understood, however, that the property of the wife of the party who makes a contract of this kind, as, for instance, her dowry, or her own private possessions, will not be encumbered on this account.

LAW XXVI.

When the Property of a Mother Is Encumbered in Favor of Her Children, and That of a Testator in Favor of Those Entitled to Receive His Bequests, and a House or Ship, or Other Property for What Was Expended in Repairing It.

If a husband die and the widow afterwards marry another, the gifts of the betrothal and the marriage given to her by her deceased husband, belong absolutely to the children of the latter, and they are entitled to collect and receive them after their mother's death; and in order that the children may be secure in this respect, all the property of their mother becomes tacitly encumbered and pledged in their favor. We decree that the same rule shall apply where the husband of a wife by whom he had children, marries a second time, while she has charge of said children and their property; for all the property of the mother is then encumbered in favor of her children, as well as that of the man whom she marries, until a guardian is appointed for them, or until they render them an account and statement of their property.

We also decree that the property of every man who makes bequests in his will is encumbered in favor of the party to whom he made said bequests, until the latter are paid. Moreover, we decree that where any man receives of another maravedis as a loan, for the purpose of equipping or repairing a ship; or to construct a house or other building or to repair the same; then, in any of these cases where the said maravedis were used or expended, the said property becomes tacitly encumbered in favor of the party who made the loan.

LAW XXVII.

The Party Who Takes Property in Pledge in the First Place, Has a Better Right to It Than He Who Receives It Afterwards, Except in Particular Cases.

It is but proper and just, that the party who accepts property by way of pledge in the first place, should have a better right to it than another who receives it afterwards. There are cases, however, to which this does not apply. For, where one man borrows money of another—or some property to be given in pledge—and makes a note for the same, or binds himself to pay the debt in some other way before he receives the money; and afterwards encumbers said property in favor of another party, receiving at the time the money from the latter; although the party to whom the property was encumbered in the first place may subsequently let him have what he promised to loan him on said property, the latter will be encumbered in favor of the party to whom it was last pledged. This is the case because he was the first to pay the money, and also because the party who bound himself to deliver the pledge to the first creditor had the choice of receiving the money, or of changing his mind, if he did not wish to observe the contract.

LAW XXVIII.

A Party Who Loans Money, to Repair or Build a Ship, or Any Edifice, Has a Better Right in Said Property to Secure Payment Than Anyone Else.

Where one man pledges a ship, a house, or any other building to another, and afterwards receives from a third party money, as a loan, to repair said property and to preserve it from destruction or decay, and expends said money for the benefit of said property; then the second party who lent his money to preserve the property has a better lien than the first, because, by means of the money which he paid the property which might have been destroyed was preserved. For this reason we decree that he should be paid first, although said property was not verbally encumbered to secure the payment of said money. We decree that the same rule shall apply if the party who loaned the money last did so to furnish the ship with arms and other things which were necessary, or to provide food for the sailors and officers of the said ship.

LAW XXIX.

The Rent of a Warehouse Where Goods Are Stored, or the Cost of Their Transportation From One Place to Another Should Be Paid Before Other Debts.

Where a man receives merchandise by way of pledge, as, for instance, oil, wine, grain, or anything of this description, and said merchandise is stored in some building or warehouse, where he is compelled to pay storage for the same; or where it is to be transported from one place to another, in a ship, or on beasts of burden, or in some other way, and another party afterwards lends money for the payment of said storage, or for the transportation of said property; we decree that the party who last lent the money for the purpose aforesaid, shall be paid before the first. What we have stated in this law and in the two others which precede it, with regard to the payment of a debt contracted subsequently through another, is understood to apply to all persons except where a liability growing out of the dowry, or the betrothal gift of a wife, or an old obligation owing to the royal treasury are concerned, for, in these two cases, the first debt contracted by such persons should be paid before the second.

LAW XXX.

A Minor, or Any Other Person, Has a Superior Claim on the Property of a Party Who Purchased Something With His Money, Over Any Other Debtor, Until He Is Paid.

Where a man encumbers all his property in favor of another, not only that which he has at that time, but also any other which he may subsequently acquire, and he afterwards purchases for himself any property with the money of a minor, although all he had may have been pledged to another party, as aforesaid, nevertheless, the minor has a better claim on the property thus purchased than the other party to whom all the property of the purchaser was encumbered. For this reason we decree that the minor shall first be placed in possession of the property purchased and the sum of maravedis for which it was bought shall be paid him, if all said property was bought with his money; and if not he shall be given as much as was used for said purchase out of the funds belonging to him. Moreover, we decree that where one man has encumbered all his property, not only what he had at the time when he assumed the obligation, but also what he expected to have afterwards; and subsequently to this borrows maravedis of another party for the purpose of buying something, entering into an agreement with him that the property which he purchased with the maravedis loaned by him, should, for this reason, be encumbered in his favor, until he was paid; then the last party will have a better claim to said property than the first with whom the contract was made giving him a general lien upon all the property of the said purchaser. We also decree that where anyone spends maravedis for the burial of a dead person, although this debt was the last one contracted, it should be paid before any other which was contracted by the deceased in his lifetime.

LAW XXXI.

A Party Who Produces An Instrument Drawn Up by a Notary Public by Which Property Is Pledged, Has a Better Claim to Said Property Than Another Party Who Produces Another Instrument or the Testimony of Witnesses.

Where a man draws up an instrument in his own hand, in which he states that he acknowledges that he received a loan of maravedis from another party, and has encumbered some property on this account, or where he makes a contract of this kind in the presence of two witnesses; the party in whose favor the property was encumbered in either of these two ways has a right to demand it of him who pledged it to him, or of anyone else in whose possession he finds it; except where he who has possession of said property alleges that an obligation was entered into with him with regard to the same, by means of a written instrument drawn up by a notary public. In this case the last creditor, if he can produce such an instrument, will have a better claim to the property pledged than the first one who holds a note written by the hand of his debtor, or has the evidence of two witnesses, as aforesaid. If, however, a note, evidencing the pledge, was drawn up by the debtor and signed by three witnesses, who wrote their names in it with their own hands, then the first creditor will have a better claim to said pledged property than the second who produced the instrument drawn up by a notary public.

LAW XXXII.**Who Has the Better Claim to Property Pledged to Two Men.**

Where a condition is attached to property which is pledged, and, before it is complied with, the party who pledged it in the first place pledges it a second time to another, and after this the condition should be complied with; the party to whom it was first pledged has a better claim to said property than the second, since the condition has been complied with. We also decree that where one piece of property is pledged to two men separately by two others, and neither of them is the owner of the same, and the party to whom it was last pledged has possession of said property, in this case he has a better claim to it than the first. But, where a man who had no right to do so pledges property belonging to someone else, and, after this, the owner pledges it to another person, then the latter, to whom it was pledged by the owner, will have a better right to it than the former whether he received it first or last.

LAW XXXIII.**Concerning the Better Claim Which the King Has to the Property of His Debtor, and a Wife, by Reason of Her Dowry, to the Property of Her Husband.**

Although both a debt owing to the royal treasury, and also that owed by a husband to his wife for her dowry, may have been subsequently contracted, the debt due to the royal treasury must be paid out of the property of the debtor before one owing to anyone else. A wife has also a similar privilege with respect to the property of her husband, except in one instance, namely: where the first debt is secured by a pledge delivered especially to some person, or where the husband has verbally encumbered all his property; for a debt of this kind first contracted should be paid before any other due to the royal treasury, and before the dowry of the wife. Where, however, one man had two wives and they are both dead, in this case the dowry which he owed to the first wife should be paid to her children who are entitled to it, and afterwards what he owed the second wife, because these debts are of the same description. But if, among the property of the husband anything should be found which personally belonged to the second wife, the title to the same will remain in her and her heirs.

We also decree that where a woman marries and promises her husband (or anyone else does so for her) to give him some particular property as a dowry; and the husband, by reason of the expectation which he has of said dowry, especially encumbers his property in her favor, and afterwards pledges said property to another party before his wife has paid him what she promised by way of dowry, she herself afterwards paying it or someone else doing so in her name; she will then have a better claim on the property of her husband than anyone else in whose favor he may have encumbered his property.

LAW XXXIV.**For What Reasons a Party Who Takes Property in Pledge Last Has a Better Claim to the Same Than One to Whom It Was First Pledged.**

Property can be pledged to two men, to one in the first place, and to the other afterwards. And if, subsequent to this, the owner of said property should also pledge it to a third party, the obligation can be assumed in such a way that the said third party will have the same claim on the property pledged, as the first one. This would be the case where these three things

were observed in assuming the obligation. First, where the third party receives the property in pledge, with the understanding that the money he loans on it should be paid to him in whose favor the property was encumbered in the first place. Second, when he made a contract with the party who pledged said property that he should have the same claim on the property pledged which the other had. Third, where the money was paid to him, in exactly the same way as the first party. But where the second party, to whom the property was pledged pays the money to the third, although he had made no other contract with him, then the right that the party had in said property vests in the second. Moreover, we decree that if a stranger in whose favor the aforesaid pledged property was not encumbered, and who has no rights whatever in it, should, by payment, release the claim of the first party to whom said property was pledged, under the agreement that the latter would transfer to him the claim which he had on said pledge; then said property will be encumbered in his favor, just as if the owner of the same had, in the first place, pledged it to him.

LAW XXXV.

How the Owner of Property Can Recover It, When One Man Who Holds It in Pledge Hypothecates It to Another.

It may happen that where property is held by one man in pledge it is subsequently pledged by him to another; and, although he may have power to pledge it if he is paid the amount which he loaned on the property, still the other party to whom he hypothecated it has no rights whatever in said pledge, but we decree that he shall surrender it to the person to whom it belongs; but he to whom it was subsequently pledged can demand of the party who pledged it to him to give him a pledge of the same kind, or pay him the sum which he loaned on it.

LAW XXXVI.

When Property Pledged Is Lost or Depreciated in Value the Amount of Damage to the Same Should Be Deducted From the Debt.

When property pledged becomes deteriorated through the fault or negligence of the party who holds it in pledge, and said deterioration amounts to as much as the debt for which said property was given as security, the holder for this reason loses the rights which he has in said pledge; and, if it amounts to less, the estimate of the deterioration should be deducted from said debt. Where the depreciation in value is greater than the debt, the party shall lose what he loaned on the property pledged, and in addition to this he must reimburse the owner of said property for all damages which he sustained by reason of said deterioration. We also decree that where the property pledged is a female slave, and the party who receives her as such compels her to earn money by the use of her body by placing her in a brothel, he shall lose any right which he has in said pledge. The same rule will apply where, contrary to the will of her master, he compels her to do something else which is improper.¹

¹ The Roman Law declared that the pledgee was obliged to exercise the greatest diligence in the care of the pledge, and therefore, if it was stolen, the presumption arose that this was due to gross neglect, and the *onus probandi* rested on him to establish the contrary. The transaction being for the common benefit of both the parties to it, ordinary care was not deemed sufficient; "*Nec sufficit ei tantam diligentiam adhibuisse, quantum in suis rebus adhibere solitus est;*" but he must take every precaution possible to insure the preservation of the property entrusted to him. "*Placuit sufficere, quod ad eam rem custodiendam exactam diligentiam adhiberet.*" (Corp. Jur. Civ. Inst. III-XIV-2-4.)

By Mohammedan law, the pledgee is responsible for the pledge if destroyed or lost while in his hands. His right to the claim is not extinguished, however, unless the value of the pledge and the amount of the debt are equal; if the former is not sufficient, the balance must be paid by the debtor, but where it is greater, the pledgor cannot demand restitution and must lose the excess. (The Hedaya, XI-IV-VI.)

The common law rule, applicable to bailments in general, is that the bailee is only bound to employ ordinary care for the safety and preservation of the article placed in his charge, also governs the case of a pledge. If this is stolen, the presumption of the Romans that due diligence was not exercised exists, and the pledge must show that he was not guilty of neglect. The jurisprudence of the Latin nations requires the use of only ordinary diligence by the pledgee. (Cod. Civ. de Fr. III-III-2, Art. 1137; XVII-2, Art. 2080; Cod. Civ. de Esp. IV-XV-2, Art. 1867; Cod. Civ. d' It. III-IV-6, Art. 1298.)—Ed.

LAW XXXVII.**No One Has a Right to Liberate His Slave While He Is in Pledge.**

No man can liberate a male or female slave whom he has pledged to another party, to the injury or loss of him who holds said slave while he is pledged in this way. But if he should emancipate him, in the presence of the party who held him, and the latter offers no opposition, the emancipation will be valid, and he still has the right to collect his debt from the owner who hypothecated him. We also decree that where a master emancipates his male or female slave whom he has pledged to another party, without the knowledge of the latter, as soon as the slave himself pays the debt, or someone else pays it for him, the emancipation will be valid. However, where a man encumbers all his property for a debt which he owes, and afterwards emancipates a slave, he has a right to do this, if the other remaining property is sufficient to pay said debt.

LAW XXXVIII.**For What Reasons the Obligation of a Pledge Is Released.**

The obligation incurred with respect to a pledge is released as soon as the party who pledged the property pays what he owes to the person to whom he pledged the same. Moreover, we decree that the same rule shall apply where a debtor desires to pay a debt and his creditor is not willing to accept it, and the former gives him notice in presence of reliable men, and seals up the money with his seal, and places it in charge of some religious institution, or good man.

We also decree that where one man has pledged his property to another, and afterwards a judge renders a decision against the party who pledged it for some reason or other, ordering him to pay a sum of money or perform some act; and, desiring to have his decision carried out, does not find any other property belonging to the said party which can be delivered to the person in whose favor he rendered the decision; he has the right to deliver him the property which the debtor had pledged, if it is worth more than what the latter received on it, although the party in whose favor it was encumbered may not be willing for this to be done; and the pledge shall be sold at auction, and out of the price obtained for the same the creditor who took it in pledge shall first be paid, and the balance shall be given to him in whose favor the decision was rendered.

LAW XXXIX.**After How Long a Time a Man Loses the Right Which He Has in Property Which Is Pledged, if He Does Not Demand It Within the Term That the Law Prescribes.**

Men sometimes encumber their property by way of pledge to others and do not deliver it to them, and afterwards alienate it. In a case of this kind we decree that where a party to whom property of this kind was pledged does not demand it from those having possession of the same, within ten years, if he is in the country, and, if he is not, within twenty, he will have no right to demand it afterwards, except where the person to whom it was given or sold receives it knowing that it was pledged to another; for then the party in whose favor it was encumbered in the first place has the right to claim it within thirty years. We also decree that where neither he to whom the property was pledged but was not delivered, as aforesaid, nor his heirs claim it, from the party who pledged it within the space of forty years, he cannot afterwards demand that it be delivered to him on account of the pledge, although the party who pledged it may be in possession of the same.

LAW XL.**In What Way the Right Which a Man Has in a Pledge Is Abrogated
Either by Speech or by Silence.**

A man either openly by words, or by silence, can lose the rights which he has in a pledge. It is done by words, where, for instance, the party to whom the pledge was given says to him who pledged the property with him, or to his agent, that he returns it, or releases him from any claim he may have upon it. Although he may abandon, and release in this way any rights which he has in the pledge, it is, nevertheless, not understood that he releases the party from the debt for which he held said pledge, except where he states publicly that he relinquished the debt as well as the rights which he had in the pledge. If, however, he releases the party from the principal debt, it is understood also that he relinquishes the pledge. A man relinquishes the right which he has in a pledge by silence, where, for instance, the obligation relating to the property pledged was reduced to writing, and the owner of said debt who had possession of the instrument, cancels it, tears it, or gives it to the party who hypothecated the property. By returning the instrument which is the evidence of the principal debt, or by cancelling it, it is understood that he relinquishes the debt as well as the right he had in the pledge; except where he does this through fear, force, or fraud employed against him for this purpose.

LAW XLI.**How and When a Party Who Holds Property in Pledge Can Sell the Said
Property if He Was Empowered to Do This by Contract.**

Men sometimes enter into contracts with one another when they receive property in pledge, with the understanding that if those who pledged said property do not redeem it within a certain time or by a certain day, they can afterwards sell it. For this reason we decree that where a contract of this kind was entered into when the property was pledged, and the party who pledged it does not redeem the same by the day appointed, from that day forward he can hold it or his heir can sell it, according to the terms agreed upon when it was pledged; before he sells it, however, he should inform the party who pledged it, if he lives in the neighborhood, that he wishes to sell it, and if he is not there, he should notify those whom he finds in his house. If the party who holds the property in pledge does this, or if, for some reason, he is unable to do it, he has then a right publicly to sell the property pledged in this way. A sale of this kind should be made at auction, in good faith and without fraud, and if the property is found to be worth more than the amount for which it is pledged, the creditor must pay the excess to the party who hypothecated it. We also decree if it is worth less, the deficiency must be made up by the party who pledged the property.

LAW XLII.**How and When Pledges May Be Sold, Although It Was Not Stated at the
Time When They Were Given as Security That This Could Be Done.**

Men sometimes place property in pledges without any contract, not designating a day on which to redeem it, or making any mention of selling the same. For this reason we decree that where an obligation with regard to a pledge is entered into in this way, and the party who holds the property, in the presence of good men notifies him who pledged it to redeem the same, and he does not wish to do so; and the property pledged consists of chattels; and

twelve days have passed since he gave him notice to redeem it, (or thirty have passed if it is real property) from that time forth he has a right to sell it. Moreover, we decree that where an agreement was made when the property was pledged that the party who received it could not sell it; even if an agreement of this kind was entered into, if the party to whom it was pledged notifies the other three times, in the presence of good men, to redeem the same, and two years elapse after he gave him notice to redeem it, from that time forth he can sell it. The sale of the pledge whenever it is made, should, however, be conducted in good faith and at auction, as stated in the preceding law. We also decree that sales of property which is delivered, and of pledges given by order of court should be made at the time and in the way prescribed by the laws, which is explained in the Title concerning Judgments,¹ in the Third Partida of this our book which treats of this subject.

LAW XLIII.

For What Reason a Party Who Holds Property in Pledge, or His Heirs, Can Sell It, Although a Part of the Debt May Have Been Paid.

Where a man receives several articles in pledge for a single debt he can sell all or any of them, if he desires to do so, in any of the ways mentioned in the preceding laws. And not only can he sell them for the entire debt, but also for a portion of the remainder of the same; and if the party who held the property in pledge dies before the debt was paid, his heirs can do the same thing. We also decree that the ownership of the property pledged, which is sold as aforesaid, passes to the party who purchased it, just as if he bought it of the owner himself. It is understood that the ownership is transferred to the party who buys it after it has passed into his possession, and he pays the price of it.

LAW XLIV.

The Party to Whom Property Is Pledged Cannot Purchase It Himself, Nor Can Anyone Else Do So for Him.

A party who holds in pledge property belonging to another cannot buy it himself, if he wishes to sell it, except where he does so with the consent and approbation of its owner. If he buys it in any other way the sale will not be valid, for whenever the owner of the property pays him the debt, he will be bound to surrender the property to him, but where the party who holds the property in pledge does not find a purchaser, upon putting it up at auction, for the reason that no one wishes to buy it, or does not dare to through fear of the owner, or because he had requested them not to do so; the party can then ask the judge of the district to grant him permission to retain said property as his own, and the judge should do so, always carefully taking into consideration the amount of the debt and the probable value of said property. If he thinks that the property is worth more than the debt, he should, in his discretion, order the party who holds it in pledge to pay the surplus to the owner of the same. If he finds that it is not worth so much as the debt, he should on the other hand, confirm the party in his rights, so that he can demand of him who pledged the property whatever he considers the amount of the deficit to be.

LAW XLV.

Where Pledges and a Surety Are Both Given to Secure a Debt, Whose Rights Should Be Protected Where the Pledges Are Sold.

When a man gives sureties and pledges together, to secure the performance of some act, or the payment of money, and after this the owner of the property pledges it a second time to another party, before he has delivered

¹ *Ante* 779.

it to the first; and the party to whom he pledged it originally sues the surety for the debt and recovers it from him; and the surety afterwards demands the pledge of the party who held it; if the judge grants it to him on account of the debt which he paid in this way we decree that, although he did this, nevertheless, whenever the owner of the pledge reimburses him for what he paid on his account the surety will be bound to relinquish the property to him. We decree that the surety must also do so, if the party to whom the owner of the property afterwards pledged it should demand it of him, after reimbursing said surety for the amount which he paid as the price of the pledge to the party in whose favor it was first encumbered, for in this case he must surrender it.

LAW XLVI.

When Property Is Pledged to Two Men Separately, the One Who Received It Last Can Recover It by Paying to the Other the Amount of the Claim Which He Had on It.

Where one man pledges the same property to two persons separately and at different times, and, after this, pays the first party the debt for which he held the pledge; nevertheless, if the second creditor to whom the property was last pledged pays the first one the amount for which he held the same, the latter will be bound to surrender it to him.

We also decree that, where the second creditor purchases the pledge from the first when he had the right to sell it, if the owner of said pledged property pays him the amount which he advanced on the same, as well as the other sum which the second creditor paid the first when he purchased the property of him, the sale for this reason will be annulled, and the party will be bound to return him said property which he purchased while he was his creditor. The profits which he received from the property, after he bought it, should, however, belong to him, for the reason that it is right that he should retain them on account of the purchase which he made.

LAW XLVII.

How the Sale of Property Pledged by a Minor Under Twenty-five Years of Age Can Be Set Aside.

Where a minor under twenty-five years of age pledges any of his property, under the condition that if he does not redeem it before a certain day it can be sold; we decree that, if the creditor afterwards sell it, the sale can be set aside, the minor being able to prove that it was made to his injury, but he will be obliged to pay to the party who purchased it a sum equal to the amount for which he pledged the property.

We decree that the same rule shall apply where property pledged by any other person whomsoever, who is over twenty-five years of age, is sold, and the latter was not present when this was done, but was elsewhere employed in the service of God; as, for instance, absent on a pilgrimage or a crusade; or in the service of the king or of his council; or while he was in captivity; or was studying the sciences; or engaged in some other occupation similar to these. For whenever any of the aforesaid persons returns home and pays the debt on account of which he pledged said property, he can recover the latter from anyone who has purchased it; but where he was guilty of negligence in demanding the property sold in this manner for the space of four years after he returned home, he will not be entitled afterwards to claim or recover it.

LAW XLVIII.**How a Sale Not Made According to Law Can Be Set Aside.**

Where a party who holds property in pledge desires to sell it and has authority to do so, as stated in the preceding laws, the party who left it with him in pledge cannot prevent him from doing so, except in one way; and that is where he desires immediately to pay what he borrowed on said property, or consents to do that for which he bound himself, without delay or modification. We also decree that if the party who holds property in pledge sells it, not having authority to do so, or, having authority to sell it, disposes of it contrary to the form and manner set forth in the laws of this Title which treat of how property which is pledged should be sold; in this case the owner of the property can demand it of any person whom he finds has purchased it in this way. He has also a right to recover it by paying to the party who purchased it in this manner what the latter paid for it, to the amount of what he pledged it for, if it was sold for that much. If it was sold for less, he should give as much for it as it cost him, and the balance should be kept for the party to whom he pledged it. If it was sold for more than the amount for which it was held in pledge, the party who sold it, and not the owner of said property, will be responsible for the surplus. Where the party who purchased the property obtained a title to it through lapse of time, it will then belong to him but he who sold it to him will be bound to reimburse the owner of said property for all damages and losses which he suffered by reason of said sale, because it was not made as it should have been.

LAW XLIX.**How the Sale of a Pledge Made Fraudulently Can Be Set Aside.**

Where a man fraudulently sells property which he holds in pledge, for less than it is worth, and the owner of the same can prove the fraud, we decree that he can make a demand on the party to whom he pledged it, (even though he had authority to sell it), to reimburse him for all damages and losses which he sustained on account of said sale. Where the vendor is so poor that he cannot recover this from him, and the party who purchased said property was aware of the fraud, he should then make the demand on him to return the property which he purchased in this way. He has a right to recover it along with the profits which the other party obtained from it, because he acted in bad faith in purchasing the same; but the owner of the pledge will be bound to refund the price which the purchaser paid for said property, as stated in the preceding law. If the party who purchased the pledge for less than it was worth desires to make amends for the fraud, by paying over and above what he paid for said property the amount which it is ascertained to be actually worth, he should not be permitted to do so, except where the owner of the property grants him permission. But where the party who purchased the property was not aware of the fraud, or exercised good faith in making the purchase; in this case the fraud or bad faith of the vendor will not prejudice his rights in any way, nor will he have any claim against the owner of the property pledged, since the party who sold it had the right to do so, although he who fraudulently made a sale of this kind is bound to make reparation for the losses and damages sustained by the owner of the property pledged, as aforesaid.

LAW L.**Whether the Party Who Sells a Pledge Is, or Is Not, Bound to Make Good the Title to the Purchaser.**

Where one person pledges property to another, with the agreement that he who receives said property in pledge can sell it; and he does sell it, not as his own but as property which was pledged, and after this, the purchaser is defeated in court in a case involving the title to said property; then the party who sold it to him will not be bound to reimburse him, but the other party who pledged the property to the vendor will be obliged to do so. But where he who sold the property bound himself to make the title good, or, knowing that it belonged to someone else and not to the party who pledged it, received it as a pledge and sold it afterwards; or if he sold it as his own, and not as property which was pledged; the vendor will be obliged, for any of these reasons, to make good the title to the party who purchased it.

TITLE XIV.

Concerning Payments and Releases Called, in Latin, *Compensatio*, and Debts Paid to Those to Whom They Are Not Owning.

Payments and releases are two things by means of which promises, contracts, agreements, and the obligations of suretyship and pledge are settled. Wherefore, since in the preceding Titles, we treated of the different ways by which men could bind themselves by words, we desire to treat here in this one in what way obligations of this kind can be released. We shall show what a payment, and what a release means, and in what way each is beneficial; how many kinds of payments and releases there are; how they should be made, and to whom, and of what property, and when; what the debtor should do when he pays what he owes, and the party to whom the payment is made is unwilling to accept it; and we shall also explain all the different kinds of releases, renewals, discounts of debts, and agreements, and for what reason a payment or a release can be revoked, after it has been made.

LAW I.

What a Payment and Release Mean, and in What Way They Are Beneficial.

A payment means satisfaction made to a party who was entitled to receive some property, so that he is paid by means of it or by what was done for him. A release is when an agreement is made with a debtor by those who have power to do so never to claim of him what he owes, and they discharge him from all liability for the debt. This is of great advantage to the debtor, because when he pays the debt, or is released from it, he himself, his sureties, his pledges, and his heirs are free from the obligation which they had assumed, by reason of which they were bound to pay said debt, or perform some service.¹

LAW II.

How Many Kinds of Payments and Releases There Are.

There are as many kinds of payments and releases as there are debts by which one man can assume an obligation to another. For as the learned men of the ancients said, where a man pays what he owes he is free from the promises which he made by which he was obliged to pay or do something. A man can also become free from such obligations by means of a release, or by the renewal of the contract; or where the party carries out the contract or makes payment with ready money, or by means of compensation, which signifies to exchange one debt for another; or by the death of the property which should be delivered; and in numerous other ways which are explained in the laws of this Title.

LAW III.

How a Payment or a Release Should Be Made, and to Whom, and of What Property.

The payment of a debt should be made to the party entitled to receive it, and out of such property as was agreed upon and promised in the contract when it was drawn up, and not with any other kind, if the party to whom payment is made is not willing; but, where it happens that the debtor cannot

¹The great Oriental lawgivers considered the contraction of a debt as something to be deprecated, and its non-payment equivalent to a crime, because often associated with deception; and it was regarded with even more abhorrence than falsehood itself. "Who to a lending man does not pay back the debt, is a thief of the loan, a robber of what is lent to him." (*Avesta, Vendidad, Far., IV:2.*) Many classic writers state that the Persians considered truth to be the greatest of virtues. Mohammed, referring to the benefit to be derived from participation in war against the infidel said: "Being killed in the road of God covers all sins, but the sin of debt."—Ed.

pay with the property which he promised, he can do so with some other, with the approval of the judge. We also decree that where anyone makes a contract to perform some act, and cannot do it in the way he promised, he shall carry out said contract in some other way, according to the will of the judge of the district, and must also reimburse the other party, for any damages and losses because he did not perform said act as he promised. A man is not only released from what he owes when he himself makes payment of it, but when anyone else does so in his name, and although the party who owed the debt may not know that the other made payment for him, he will, nevertheless, be released from it, and the case will be the same even if he did know it, and opposed it.

LAW IV.

How Payment Should Be Made to Another Under Twenty-five Years of Age, in Order that the Party Making It May Be Certain That a Demand for Said Payment May Not Be Made a Second Time.

Every man who is obliged to make a payment to another under twenty-five years of age should be careful to do so in such a way that he may not have to pay the debt a second time; and, in order to be certain of this, he should pay what he owes to the party himself or to his guardian, with the consent or order of the judge of the district. For if he should do this otherwise, and the payee should afterwards gamble away the money he received, or squander, or lose it, the debtor will not, for that reason, be released from the obligation, but we decree that he must pay it again. But where payment is made by permission of the judge, as aforesaid, although said minor afterwards wastes the money, the other party will not be bound to pay him a second time, and we decree that he shall be absolutely released from the debt. We also decree that the same rule shall be observed where payment is made to an insane person, or to one who has lost his memory, or to a spendthrift for whom a guardian has been appointed.

LAW V.

A Man Is Released from a Debt Where He Pays It to the Party Entitled to It, or by His Order.

When one man owes a debt to another and pays it to a third party by the order of the person to whom he owed it; or when he does this without his order and he afterwards ratifies the transaction; the debtor is released from the debt which he owed just as if he had paid it to the creditor himself. We decree that the same rule shall apply where he pays the debt to a steward, or agent especially appointed by the creditor to receive it, and to care for and have charge of all his property.

We also decree that where one man lends another money and takes a promise from him in the following manner, to-wit; "Do you promise to pay the maravedis which I lend you to me or to So-and-So?" and if he pays the said maravedis to the other party whom it was mentioned should be paid, he will be released from the debt, just as if he had paid them to the creditor himself; although, after he had taken the promise in this way, he may have forbidden the debtor to pay them to said party. We decree that this prohibition shall be understood as follows; that is to say, it will be effective if it was made before the party who loaned the maravedis brought suit for the debt. Where, however, he forbade him, after he had brought suit for the same, and he should pay them in violation of said prohibition, he will not then be released from the debt, but we decree that he must pay it a second time to the party who received the promise. The rights of him who, in this way, made payment

of the debt twice, remain unimpaired, to claim the amount from the party whom he paid in the first place, as one who had no authority to retain the property.

We also decree that if the party who was last mentioned in the obligation, as being empowered to receive payment, should change his condition after the promise had been made in this manner, he who made said promise will not be obliged to pay him the debt. This would be the case if he was at that time free, and afterwards, for some reason, becomes a slave; or where he was a layman and afterwards becomes a member of a religious order; or where he was subsequently condemned to perpetual banishment in some certain place; or where, in any other way whatsoever, he loses control of himself and is placed under that of another. Moreover, we decree that if the owner of the debt who received the promise from the other party, should subsequently be accused of any crime which he had committed, which was of such a nature that he was liable to lose his life and all his property on account of it; then the debtor should not pay the debt until his creditor is acquitted; but where he is accused of some other offence of a different character, the debtor then has no reason to retain the debt, but we decree that he not only can, but shall, pay the same, and be released from the obligation by doing so.

LAW VI.

In What Way a Man Should Make Payment to a Third Party by the Order of Him to Whom the Debt Is Due, if He Should Afterwards Forbid Him to Give Him Anything.

Where a man directs his debtor to pay to another party, whom he specifically designates, what is owing to himself, and after this forbids him to pay said party, and the debtor, in opposition to said prohibition, does pay him, he will not for that reason be released from the debt. But if he should pay him after he had ordered him to do so, and the creditor, thinking that he had not yet paid him, forbids him, he who made the payment will then be released from said debt. We decree that the same rule shall apply if, after he had ordered him to pay the debt, he should send him word by letter, or by a positive message, not to do so. For if he did not receive the letter, or the messenger did not deliver the message, and the party pays the debt not being aware that the creditor who had ordered it to be paid had afterwards forbidden this to be done, the debtor will then be released from the debt, just as if he had paid it to the creditor himself.¹

LAW VII.

Whether Payment Should, or Should Not, Be Made to Any Attorney Who Brings Suit for It in Behalf of Another Party.

When one man appoints another his attorney to bring suit for some debt which is owing him, although such an attorney may defeat the debtor, the latter should not pay him the debt, except where the creditor, by a power of attorney, granted him authority to receive payment, as well as to bring suit for the debt. If he did

¹ Subrogation, better known to the civil law—from which it is derived—as *substitutio*, was, by the Romans, more frequently applied in the case of heirs than that of creditors. The Spanish Code enumerates three kinds of subrogation: When one creditor pays another preferred creditor; when a third and disinterested party pays with the express or implied approval of the debtor; when the party interested in the discharge of the obligation makes payment without injury to the effect of the confusion relating to his share. (Confusion is where the same person becomes both debtor and creditor.) (Cod. Civ. de Esp. IV-I-2, Art. 1210.) The last two of these are specified by the French and Italian laws as constituting subrogation. (Cod. Civ. de Fr. III-III-2, Art. 1271.) (Cod. Civ. d' It. III-IV-2, Art. 1267.) Subrogation of a third party in the right of the creditor cannot be presumed, but must be clearly established by evidence, according to the jurisprudence of all these nations. The provisions of the Louisiana Code relative to subrogation are substantially the same. (Civ. Cod. of La. IV-VII, Art. 2155-2158.)—Ed.

not grant him such authority in the power of attorney he should pay and deliver said debt to the creditor, and not to his attorney.

We also decree that an attorney of this kind cannot make an agreement with the party whom he is to sue for the debt that he will not bring suit for the same, nor can he give him a release for it. Where, however, by the power of attorney he was granted full and free authority to bring suit for and to collect the debt, and to do everything else which the creditor might do if he were present; he then has power to receive payment or to release the debt, just as the creditor himself has who appointed him his attorney.

LAW VIII.

How Payment Should Be Made by a Debtor, When the Party Entitled to It Is Unwilling to Receive It.

Men appoint certain dates and days upon which they promise to pay to or do something for one another. For this reason we decree that everyone is bound to pay or do what he promised at the time appointed for the same, and he cannot avoid doing so, even though the other party does not demand it. We also decree that where a debtor wishes to pay a debt to the party entitled to receive it, and the latter is unwilling to accept it from him, he should give notice in the presence of reliable men at a proper place and time, and produce the maravedis with which he desires to make payment. He should deposit said maravedis in trust with some reliable person, or in the sacristy of some church, and, from that time forth, he will be released from the debt, and the other party will have no claim whatever against him. We also decree that where the said maravedis are lost without the fault of the debtor, after they have been placed in trust, as aforesaid, the loss shall be borne solely by the creditor, for the reason that he was at fault by not being willing to receive them when the debtor wished to pay him.

LAW IX.

A Debtor Is Released by the Death of Anything Specifically Designated Concerning Which an Obligation Was Assumed.

Where one man owes another a beast of burden or any other specified piece of property, and said property is lost or dies before the time when it should be delivered; or, where no time was appointed, before the other party brings suit for the same, and said loss or death did not result through the fraud, or fault of the debtor, he will be released from said debt; but where the said property is lost or dies through the fault of the debtor, or on account of some fraud which he committed, he will then be bound to pay the value of the same. We also decree that where one party demands a debt of another, which he says he owes him and the other denies this, stating that he does not owe him anything; if the party who claims it, voluntarily requests the oath of the other and the latter agrees, and swears that he does not owe him what he demands, he shall be released from the debt just as if he had paid it and been freed from said obligation by a decision of court.

The same rule shall apply where one man gives another an instrument in writing containing evidence of the debt which he owed him, or purposely tears it with the intention of releasing him from said debt, for he will be, for this reason, released just as if he had paid it. Where, however, the creditor who is entitled to the debt can prove by reliable persons that he gave the said instrument to the debtor in trust, and not with the desire to release him from the debt; or that it was stolen from him, or taken by force; or was torn against his will; his claim against the party who owes the debt will in this case remain unimpaired.

LAW X.**When One Man Owes Several Kinds of Debts to Another and Makes Payment of One of Them, of Which One It Shall Be Understood That Payment Was Made.**

Where one man owes another several kinds of debts, and pays him one of them, and indicates for which debt he made said payment, it should be credited on that which he indicated, and not on another. Where the party who makes the payment, does not state for which debt he made it, and the creditor designates at the time one of the principal debts, stating that he receives it in payment of the same, and the party who pays is silent; then said payment should be applied to the debt which is designated and not to another. But where the debtor opposes this at the time, before he leaves the place, the amount which he paid should be either returned to him or credited on the debt which he designates. When it happens that neither the party who makes the payment, nor the one who received it indicates on which debt it is to be applied; then, if the debts are equal in amount, and contain no burdensome condition of penalty or usury, one any more than the other, payment should be divided among the principal ones, acknowledged by the debtor, and with regard to which no dispute exists. Where there is a debt which is more oppressive than the others on account of some penalty attached to it, or some other burden of this description, the payment should only be credited upon a debt like this because of its greater severity.

LAW XI.**To Whom Payment Out of the Property of a Debtor Should Be First Made, When the Debts for Which Suit Is Brought Are of One Kind and Without Pledges.**

Men sometimes become indebted to others, not encumbering their property or any portion of the same, but acknowledging their obligations in writing or before witnesses in court. A debt of this kind is called, in Latin, *debitum personale*, which means a debt for which the party who makes it is personally bound, and for which his property is not wholly or partially responsible. Wherefore, we decree that where a man owes several persons debts of this kind, any one of them can bring suit for what is due him, and for whomsoever a decision is first rendered against the debtor he shall be paid before any of the others, although his claim may be the most recent, and the others to whom the party aforesaid is indebted will not have recourse against the creditor who obtains his debt. But where all the other creditors, or a portion of the same, also bring suit for their claims, and a decision is rendered against the debtor at one time in favor of all his creditors, or in favor of a portion of them; then, if the debts of said party cannot be paid out of his property, the creditors in whose favor the decision was rendered should divide among themselves what they do obtain, each of them being given more or less, according to the proportion to which he is entitled. Where, however, anything belonging to some other person is bound, with the property of a debtor of this kind of which he had been given charge; we decree that the owner shall retain his right to said property unimpaired, and that the said creditors can, in no way, interfere with the same.

LAW XII.**How the Payment of Property Committed for Safe Keeping Should Be Made.**

Claims for property committed to the care of another are of superior consequence, for although the party who takes charge of said property, may have other obligations, if the demand is made upon him he should pay one of this kind in preference to any other that he owes. This would be the case where, for instance, a party who had given property in charge to another brings suit for it against him to whom he had delivered it, and, at the same time, sues him for other debts on account of which the property of said debtor was not encumbered, and which are not of the same character as the former. In this case a judge should compel the debtor to surrender what was given him in charge, before any other debt which he was compelled to pay, although the other may be older.

LAW XIII.**How Compensation for Unlawful Acts and Injuries Which Men Commit Against the Property of One Another, Should Be Made.**

Men frequently commit illegal acts and injuries against property belonging to others, by cutting down trees, rooting up vineyards, and killing and wounding slaves and cattle, and in other ways like these. For this reason we decree that where anyone has a claim against another for any damage or loss which he has caused to property of this kind, the malefactor will be liable to the party who sustained the injury, just as he would be for any other debt which he would be compelled to pay him. And whether one or many persons bring suit on account of an illegal act, the party in whose favor the decision was first rendered against the malefactor shall have priority, and each of said parties shall share in the property of said malefactor in the way we mentioned above in the law which begins; "Men sometimes become indebted."

LAW XIV.**Men Should Quietly Bring Suit for Their Debts, and Not Themselves Seize Those Who Are Indebted to Them.**

Men should sue others for the debts they owe them quietly and without any manifestation of anger, and they ought not, by reason of any power or wealth possessed by those to whom the debt is due and without the order of the judge of the district, use compulsion upon the debtor, or seize him in order that he may pay the debt except where, when the obligation was contracted, the party who owed it granted permission, and agreed that his creditor could himself arrest him and subject him to compulsion, without any order of court.

If anyone breaks this law, by himself employing violence against his debtor, not having the right to do so, as aforesaid; and if by reason of the force which he uses, the other party is compelled to pay the debt, he must return the same and lose all rights which he had against him growing out of said obligation; and if he should not receive the debt from him and seizes his property by force, he must return to him double the amount so seized, and the debtor will not be bound to answer concerning said debt, until said property has been returned.

LAW XV.**How an Obligation May Be Abrogated by Means of Another Newly Made.**

A renewal is another kind of release, which annuls the principal obligation of the debt, just as payment does. This would be the case where one man sells another some property, and the purchaser afterwards renews the contract in

some other way with the vendor, binding himself to pay the price, as in the case of a loan. In this instance the debtor will not be obliged to pay him what he owed him, as in the case of a sale, but as if he had borrowed of the party the maravedis included in the price.

We also decree that a contract made in the first place can be renewed in another way, as, for instance, where a debtor who owes something to another renews the contract, giving another debtor or a substitute in his stead, to the party to whom he owed the debt, with the consent of the latter; the said debtor stating publicly that he did this with the intention that the first contract should be annulled, and that the debtor or substitute who was recently put in his place should be liable for the debt, and that he should be released. In this case the second contract will be valid and the first one will be annulled. And although the second person who renewed the contract may be reduced to poverty and may have no means wherewith to pay the debt, the party who is entitled to the same will have, nevertheless, no recourse in this respect against the original debtor. But where the debtor did not speak the aforesaid words when he renewed the contract, but simply stated that he gave So-and-So as the debtor of, or substitute for said obligation; then by this renewal of the contract the first one will not be annulled, but we decree that it shall be ratified, and that both parties shall be bound for the payment of the debt, although where one of them pays it they will both be released from the principal obligation.

We also decree that where the renewal of the contract which we mentioned in the beginning of this law was made under any condition, and the condition was complied with afterwards, the first contract, will be, for this reason, annulled, and the second will become valid; and the party who took it upon himself to pay the debt which was renewed will be bound to do so, and the other who owed said debt, will, because of this, be released. But if the condition is not complied with, then the first contract shall stand and the debtor who made it will be bound to carry it out, and the renewal of the second contract will not be valid. We decree that the same rule shall apply where the party who renews the second contract changes his condition, either before or at the time when said condition was complied with, so that he has no power to appear in court; for, in this instance, even though he complied with the condition, the second contract will not be valid but we declare that the first one shall be.

LAW XVI.

Where a Contract Which Should Be Made Absolutely Is Renewed Under a Condition, It Will Be Valid.

A man can bind himself, by making a contract under a condition, to pay a debt or to perform a service; and after this is done some other party may renew the contract relating to this same debt, binding himself absolutely, without any condition, to pay it for him. In a case of this kind, we decree that the second contract shall not be valid if the condition inserted in the first one is not complied with; for, since the contract is renewed concerning the same debt, this cannot be done if the condition is not attached to it, as it was in the first instance; except where, when it was renewed in this way, the party who made the renewal stated publicly that although the condition inserted in the first contract had not been complied with, he bound himself to pay the debt; for then, whether the condition is complied with or not, the second contract will be valid and the party who made it will be bound to pay the debt and the first one will be released.

LAW XVII.**A Debt Which Is Owed by a Freeman Cannot Be Renewed by a Man Who Is a Slave.**

Where a slave renews a contract for a debt owed by another party, binding himself to pay the same, such a renewal will not be valid, nor will the contract if made, in the first place, for the payment of a debt by a man who is free, be abrogated, for the reason that a slave cannot individually bind himself in any way; except where a renewal of this kind was made with reference to some capital which his master had granted him to be employed in buying and purchasing merchandise in a shop kept by said slave.

We also decree that where a woman renews a contract for the payment of a debt owed by a man, and agrees to pay it, even though she renewed it in this way she can revoke it, and if she does revoke it, said renewal will not be valid, nor will the first contract be annulled on account of it. The reason for this is that the contract is a kind of security for which a woman cannot bind herself.

LAW XVIII.**Where Some Man Owes a Debt and a Minor Renews the Same, It Cannot Afterwards Be Collected of Either the Minor or of the Other Party.**

Where a minor over seven years of age and under fourteen, on his own responsibility, makes a contract, binding himself to pay the debt of another, without the consent of his guardian; the first contract is annulled by such a renewal, and the party who made it will be released, so that he will not afterwards be bound to pay the debt, nor will the minor either, if he does not desire to. The party who renewed the obligation with a minor of this kind must assume the blame, because said minor had no authority to make a contract to his own injury.

LAW XIX.**Whether a Party Who Thinks That He Is the Debtor of Another But Is Not So, and Who Afterwards Assumes Payment of Said Debt to Another Party, Is Bound to Pay the Same.**

Where one man thinks that he is the debtor of another and for this reason is induced to assume payment of an obligation due to a third party which his supposed creditor had to pay, by renewing said debt and binding himself to pay it; the first contract is annulled by a renewal of this kind, and the renewal of the second contract will be valid. The party who contracted said debt is obliged to pay it, although he may learn positively, after he has made the renewal in this way, that he did not owe anything to him whose debtor he thought himself to be; but he has still the right to demand of him whose debtor he thought himself to be, before he pays said debt, to release him from the obligation he entered into on his account, and if he refuses to do this, and brings compulsion to bear upon the other so that he is forced to pay said debt out of his own property, then he in whose name the debt was renewed is absolutely bound to reimburse him for what he paid for him; and he cannot avoid doing so, although he may say that he did not direct him to become substitute debtor or payer since he paid in his name what he owed him, thinking that he was obliged to do so. But where a man becomes the debtor of another, thinking that the creditor to whom he is indebted is obliged to pay something to a third party, and this is not the case; and he renews the contract and binds himself to pay him what he thinks his own creditor owes him; even if he enters into a contract of this kind, he can say before he makes payment that he

will not pay him anything, setting up the defense that he should not pay him since the other party for whom he assumed the debt does not owe him anything.

If he does pay him the debt he assumed, and makes the payment by the direction of the other party, his creditor, he then becomes released from his obligation; but the party to whom the debt was due can compel the other party to return to him what he received from his debtor, since he did not owe him anything, and he who received payment improperly is bound to make restitution for the same. Where he makes payment himself, without the order of his creditor, in this instance he will not be released from the debt he owed, and we decree that he shall be bound to pay it. He has also a claim against the other party to compel him to return what he paid him, and he should return it to him though he may not be willing to do so.

LAW XX.

How One Debt Can Be Discharged by Means of Another by Way of Compensation.

Compensation is another kind of payment by which the obligation of a debt owed by one man to another is discharged, and *compensatio*, in Latin, means, in Castilian, to set off one debt against another. This would be the case where a man brings suit against some person for a thousand maravedis, and he against whom the action was brought alleges that he wishes to prove that his adversary owes him the same amount, and petitions the judge to order that both of them shall be released from their obligations. In case the judge finds that this is actually the truth, he shall order that one debt be set off against the other, and both parties are bound to consent to this, and to act accordingly. The judge should, however, first before he orders this release to be made, ascertain whether the party who wishes one debt to be set off against the other can at that time, or within ten days at the latest, prove and establish his allegation, and if he does prove it or the other acknowledges the debt, he should then issue the order as aforesaid. But if he thinks that the party cannot prove it within that time, for the reason that the witnesses are at a distance, or the documents containing the evidence are not at hand, the judge should not then grant the aforesaid release, but should proceed with the case as directed by law.

LAW XXI.

Which Debts Can Be Settled by Compensation, and Which Cannot.

All debts for property which can be counted, weighed, or measured, can be discounted by way of compensation to the amount owing by one debtor to another. We also decree that, where two men owe one another property which is not certain or designated; as, for instance, a horse or something else of this kind, not indicated by name or by certain marks, in this instance one debt can be set off against the other. But where the debt was incurred with respect to some certain article, as where one party was bound to give another a slave, a vineyard, an orchard, or some other property which is definite, and the latter owed the former something not definitely mentioned by name; as, for instance, a certain quantity of wheat or something else which can be counted weighed, or measured, in this case the said debtors cannot be compelled to release one another by a set-off of debts of this description.

LAW XXII.**Partners Can Set Off with One Another the Amount of Damages and Losses Which They Sustain Through Their Own Fault on Account of a Partnership.**

Where two or more persons are in partnership, and one of them demands reparation of the other on account of some loss sustained by the property of the partnership through his negligence or fault; and the other answers that he also has destroyed or caused a depreciation in value of an equal amount of the property of said partnership; for the same reason the losses sustained in this way by the property of the partnership can be made the subject of counter-claim by the parties if the amounts are the same, and if they are not, to the amount of the loss caused by each of them.

We decree that the same rule shall apply where one of the partners has caused an injury to one part of the property belonging to the partnership, and made the balance more profitable. The profit which he secured and the injury which he caused should be compared with one another, and counterbalanced according to the amount of the injury or the profit. The case would also be the same where one of the partners appropriated something belonging to the firm, and the other makes a demand upon him to surrender to him his share of what he had appropriated; and he who took said property should say that he will not give it to him because he could prove that he had injured the property of the partnership to an amount equal to, or more than that which he himself took, and if he can prove this the two claims should be set off against one another.

LAW XXIII.**How Injury Done to the Property of a Partnership, Through the Fraud of One of the Partners, Should Be Compensated.**

Where a partner commits fraud with regard to the property of a partnership, through which loss or depreciation of value results to said property; and the other partner demands reparation of him, for what was lost or depreciated in value through his fraud; and the partner upon whom this demand is made answers that he desires to prove that an equal amount of the property was lost or depreciated in value through fraud committed by the other partner; if he proves this, we decree that one of the claims for injury shall be set off against the other. We also decree that where any property belonging to a partnership is lost or depreciated in value through the negligence or fault of one of the partners, and other property, of the same value is lost or becomes deteriorated through fraud committed by the other partner; then one claim can be set off against the other. But where only one portion of said property was lost or depreciated in value through the fault of one partner and the fraud of the other, then the fraud cannot be counterbalanced by the fault; but we decree that the party who committed the fraud shall be bound to pay the amount of the damage or loss caused by him, and that he has no claim on the other party on account of the fault which he committed, for the reason that in the balance of justice the fraud of the one partner weighs more than the fault of the other when both have been committed with reference to one and the same thing. What we have stated in these two laws concerning partners, is also understood to apply to contracts entered into by other men with respect to property of this kind, held in common by them in some other way.

LAW XXIV.**Sureties and Attorneys Can Set Off Debts Which They Secure, if Suit Is Brought Against Them in Court.**

Not only can principal debtors set off one debt against another, but also their sureties can do the same with the debts which they owe to the parties to whom they become sureties, as well as with those which they themselves owe to their creditors. We decree that the attorney of the principal debtor or of the surety can do the same thing, by giving sureties that the party whose attorney he is will ratify the transaction. However, a debt which an attorney owes to a party against whom he brings suit in the name of another, cannot be set off by way of compensation, in the name of the party whose attorney he is, without the approval of said party.

LAW XXV.**A Son Can Set Off in Court the Debts for Which His Father Is Sued.**

Where a man is summoned before a judge on account of a debt which he owes, and is unable to appear and answer at the time appointed; and one of his sons appears to answer in his stead, and states in open court that the party who summoned his father owes the latter a sum equal to that for which he sued him, and petitions the judge to order one debt to be set off against the other; a release of this kind will not be sufficient, except where the son gives a surety that his father will ratify whatever he does with regard to said suit. For, when he gives a surety in this way, and proves the debt which he alleges that the plaintiff owes his father, or where the other party acknowledges said debt, the judge can then order one debt to be set off against the other. We decree that the same rule shall apply to all suits where men desire to protect one another, although they may not be sons or relatives, or have any power of attorney.

LAW XXVI.**For What Reasons Those Who Owe Sums of Money to the King or a Council, Cannot Set Them Off by Way of Compensation.**

We stated in the preceding laws that debts of property which men owe to one another which is of such a character that it can be weighed, measured, and counted, can be set off against one another. There are instances, however, in which this is not the case, as for example where the king or some council had property which was set aside for the purpose of cultivation; or to rebuild the walls, fountains, or bridges of his council; or to construct engines or helmets; or to purchase arms or provisions for troops, or to provide food for persons in the service of the king or of some council, or for other such purposes; for every one has to pay out maravedis set aside in this way, and although the king or a council may owe the other party a debt, one obligation cannot be set off against the other.

We also decree that where one man owes a tax, or quit-rent to the royal treasury or to some council, even if the king or the council of said place owes the party a debt, one obligation cannot be set off against the other. We decree that the same rule shall apply to tolls which men have to pay for property transported from one place to another. We also decree that where one man appoints another his heir, under the condition that, after his death, his land shall belong to the royal treasury, or to the council; or where he gives him maravedis or any other property in trust, to be paid to the royal treasury or to the council; although the king or the council may be indebted to said party one claim cannot be set off against the other.

LAW XXVII.

A Sum Which a Man Was Condemned to Pay in Court on Account of Some Violence Which He Had Committed, or Property Which Has Been Placed With Another for Safe Keeping, Cannot Be Set Off Against Another Debt.

Where a decision has been rendered against a party, ordering him to pay a certain amount of maravedis by reason of some violence or wrong which he has committed, if the party against whom the wrong was committed owes something to the other and is asked to set off said debt for the one for which a decision was rendered, he is not bound to do so if he is unwilling. We also decree that where a man commits property to another for safe keeping, whether it was such as can be counted, weighed, or measured, or not, although the party who gave him charge of it, may be indebted to him, he cannot ask that one claim may be set off against the other, but he is absolutely bound to return what he received from said party for safe keeping, and, after this, he can make a demand on him for what he owes him.¹

LAW XXVIII.

How Payment Can Be Revoked When It Is Not Made As It Should Be.

Men sometimes think and believe that they are bound to deliver, or make payment for things which they do not owe. This would be the case where one party is the debtor of another, and his attorney or steward pays said debt, and he, not knowing this, afterwards pays the debt a second time; or where one man happens to be indebted to another, and the latter by his will released him from the debt he owed him, and the party, not being aware of said release, pays the debt to his heirs. For this reason we decree that, where a party makes a payment by mistake, and establishes the fact by proof, whatever he paid shall be returned to him.

LAW XXIX.

Where the Party Who Makes a Payment Revokes It, Stating That He Made It Through Mistake, and the Other Denies This, What Should Be Proved.

A doubt may arise with respect to a suit brought by one party against another, one stating that through mistake he paid what he did not owe, and the other declaring that this is not true, which of the parties, the plaintiff or

¹ Set off (styled *compensatio* by the Romans), as applied to genuine contracts, and by which mutual obligations should be cancelled, was not recognized at common law. "*Compensatio, est debiti et crediti inter se contributio.*" By means of it all *bona fide* debts could be extinguished; and while it was essential, as a rule, that obligations should be of the same kind, a natural debt could be set off against a civil one. "*Etiam quod natura debetur, venit in compensationem.*" (Corp. Jur. Civ. Dig. XVI-II-1, 6.) It was also required that both debts should not only be legally collectible, but also due and payable when compensation was made. Where the claims were equal, both were extinguished, where they were not, the greater one was reduced by the amount of the set off. A surety had the right to set off a debt owing from the creditor to the principal debtor, but the latter was not permitted to exercise the same privilege with regard to one due to the surety. "*Si quid a fideiussore petetur, acquirissimum est, eligere fideiussorem, quod ipsi, an quod reo debetur, compensare malit.*" (Corp. Jur. Civ. Dig. XVI-II-5.)

The Spanish law requires that each of the parties bound be a principal, and also the principal creditor of the other, that the property, if not money, be of the same kind and quality; and that no suit by a third party of which the debtor has had notice affect either of the claims. (Cod. Civ. de Esp. IV-I-4, Art. 1196.) In France, the term of grace is not an obstacle to compensation, and where the debts are not payable at the same place it cannot be opposed without submitting an account of the expenses of collection. (Cod. Civ. de Fr. III-III-4, Art. 1292, 1298.) The Italian law is almost the counterpart of the French. (Cod. Civ. d' It. III-IV-4, Art. 1285-1295.)

While the doctrine is very broad in its application under our procedure, it is necessary that the claim be owing to, or held by the party in his individual right, for no obligation held in the right of another person can be set off in law or equity. The reciprocal obligations must be of the same character. Where the government is the creditor, no set-off can be made—which has always been the rule in monarchical countries—unless where a special act of Congress authorizing it has been passed. Where a suit is brought against persons composing a partnership, a claim of one of them against the party who brings the action cannot be set off, but a debt due to all together may be. When the amount of set-off exceeds that sued for, the defendant is entitled to a judgment for the surplus. The majority of the principles controlling compensation and set-off are practically the same in both the Roman and Anglo-Saxon legal systems. (Parsons on Contracts, II-X-pp. 733-746.)—Ed.

the defendant, should prove his allegation. Wherefore we decree that if the defendant acknowledges the payment, stating that it was made properly and not through mistake, then the plaintiff must prove the mistake, and if he does so, what he paid shall be returned to him. But if the defendant denies the payment, and the plaintiff proves only that he has made it although he may not prove the mistake, then the defendant will be bound to return him what he paid, except where he desires to prove, at once, that the said payment was properly made. The distinction which we make in this law applies to all persons except one under twenty-five years of age, a woman, an ordinary laborer, and a knight employed with his horse and arms in the service of the king or of the country; for, where any of said parties institute proceedings against another in court on account of having made payment of what was not due, and the defendant admits said payment, the party who received it will be obliged to prove that it was genuine, and that he was entitled to it by law. If he is unable to establish this he will be bound to return what he has received in this way.

LAW XXX.

A Party Who Knowingly Pays What He Does Not Owe, Cannot Afterwards Bring Suit for It.

Where a man intentionally pays a debt which he does not owe, we decree that he cannot afterwards bring suit for it, because a party who pays what he knows that he does not owe, is understood to do so with the intention of making a present of it. For this reason he cannot bring an action to recover the money, except he who makes a payment of this kind is under twenty-five years of age, for such a person can recover what he has paid in this way, on account of his minority. We also decree that where a person pays a debt and was not certain whether he owed it or not, but he paid it while in doubt, and it should afterwards be proved that he did not owe it; the party who received said debt will be bound to refund it to him.

LAW XXXI.

If Bequests Contained in an Imperfect Will Are Paid They Cannot Be Recovered.

Men, at times, do not draw up their wills properly, yet leave bequests in them; and although according to the subtlety of the law, a party having possession of a will of this kind cannot be compelled in court to pay bequests contained in it nevertheless, if he or his heirs pay such bequests voluntarily, they cannot afterwards demand that they be returned; even though they may say that they could have protected themselves by law from paying such bequests because they were contained in a will which was not drawn up as it should have been.

We also decree that although the party who paid said bequests may state that when he paid them he did not know that he was not obliged to do so, and that for this reason he should recover them; an excuse of this kind will not be valid, for we hold that all persons in our dominions should be familiar with these our laws; and if anyone, through not being familiar with them, commits an act contrary to their provisions which results to his injury, the blame for this should attach to him; except where the party who made a payment of this kind is a knight belonging to our court, for our knights should exert themselves more in the practice of arms than in studying the laws; or where the party is a woman; or under twenty-five years of age; or a common laborer; for persons of this description can excuse themselves in such cases by stating that they were not familiar with these laws.

LAW XXXII.**How Payment of a Debt Made Under a Condition Can Be Revoked.**

Where a condition inserted in a contract is of such a nature that doubt arises whether or not it can be complied with, as when a party says: "I promise to pay so many maravedis if such-and-such a ship comes to Seville," and he pays said maravedis before the condition is complied with, he has the right to demand their return. This is the case because it may happen that the condition cannot be complied with; but where the condition is of such a character that under any circumstances it can be complied with, as, for instance, when a party says; "I promise to pay you so many maravedis if I die;" or something else of this kind, and pays the maravedis in his lifetime, he cannot demand them after payment has been made, because it is absolutely certain that the conditions will eventually be complied with.

LAW XXXIII.**A Demand for the Recovery of Money Cannot Be Made of the Party Who Makes the Payment, on Account of a Judgment Rendered Against Him.**

Where anyone has been ordered in court to pay a debt and he does not appeal from the decision, although the debt may not be genuine he will be bound to pay it, and after he has paid it, he cannot demand that it be returned to him, even if he says that he wishes to prove that it was not contracted as it should have been; and this is the case on account of the effect which a judgment has. For although a judge may render a decision contrary to truth, through the fault of the advocates who did not make their arguments properly, or because of the ignorance of the judge; after it is once rendered it must be observed, if no appeal is taken from it; except where the party against whom said judgment was rendered can prove that it was based upon false allegations or witnesses, or upon forged documents; and when he can prove this, he has a right to recover what he has paid on account of said decision.

We also decree that where one man sues another on account of something which he is bound to pay or do, and the court releases him from liability for said claim; and, after this, the defendant voluntarily pays or does what he was sued for, he cannot subsequently demand that the amount be returned to him; for although judges sometimes release parties from liability for claims whom they should not release, and, after this is done, according to the policy of the law the defendants cannot be compelled to pay; they are nevertheless naturally indebted to the parties against whom the decision was rendered, and for this reason by paying the amount or doing that for which they were sued, they cannot afterwards bring an action against their adversaries. Where, however, the parties against whom wrongful claims are made are reluctant to appear in court, and enter into a contract to pay their opponents something in order to be released; we decree that, though they could have been protected by law, yet since they voluntarily promised and bound themselves to pay the plaintiff, they shall be required to comply with their obligation. Where they pay what they promised, the claim cannot afterwards be enforced against them, except where one of them can prove that the party who instituted the suit did so maliciously, knowing that nothing was owing to him; for where he can establish this, he will have a right to bring suit for and recover what he paid on this account.

LAW XXXIV.**Where a Man Releases His Opponent Through a Dislike to Prosecute the Suit, He Cannot Afterwards Bring An Action Against Him.**

Men sometimes bring genuine actions against one another, and those against whom the claims are made defend themselves with great shrewdness; so that through the annoyance the plaintiffs suffer from the prolongation of the suit and their fear that they may lose their claims they come to terms with the defendants, and release them from a portion of the debt which they sued for, or enter into other new agreements which are not to their advantage. For this reason we decree that any compromise and contract thus made must be observed by both sides, and no matter what amount is released by the plaintiff, he cannot afterwards demand it; and although he may excuse himself by saying that he was induced to make the contract or the release on account of the malicious acts of the defendant, such an excuse will not avail him; except where he can prove that the defendant defrauded him by causing him to lose his documentary evidence, or by interfering with the witnesses by whom he could prove his claim, and that for this reason he gave a release for the debt or for some portion of it; for he will then be entitled to bring suit for and recover the portion which he released in this way.

LAW XXXV.**An Action Cannot Be Subsequently Brought for What a Man Gives in Consideration of Marriage or for a Work of Piety.**

Where a man gives a portion of his property as a dowry, or on account of relationship or of some other obligation which he thinks he is under, or as a marriage gift, although he may ascertain positively after he has married the woman that there was no reason for him to do this, and that he was mistaken; he, nevertheless, cannot bring suit for, or recover what he gave her on this account. This is the case because such a gift is a work of piety and cannot afterwards be demanded.

We also decree that the expenses incurred by a man in bringing anyone up in his house for the service of God, cannot afterwards be demanded; except where the party who was brought up, as aforesaid, is a woman and he desires afterwards to marry her, or have one of his sons do so, and the woman's father, or she herself, opposes it. In this case either one of said parties who prevent the marriage from being made will be obliged to pay the expenses incurred in rearing the woman. What we mentioned in this law applies not only to the instances aforesaid, but to all others similar to them.

LAW XXXVI.**Where a Party Who Expects to Be the Heir of Another Pays Any of His Debts, He Will Be Entitled to Recover Them Out of the Property of the Deceased.**

Where a man enters upon the property of another who is deceased, thinking in good faith that he had been appointed his heir, or that he had, in some other way, the right to inherit his estate; and, while in possession of said property he pays any debt owed by the owner of the same, in the name of the deceased and not in his own; and he is compelled to surrender the estate on account of the claim of another heir who is truly found to have a better right to inherit it than he; before he surrenders the property he has a right to collect from it the debts which he paid out of his own money in the name of the

deceased, and he has no claim against any of the parties to whom he paid said debts; but if he is compelled to surrender said property before the debts are paid to him, he can bring suit for, and recover them from the other party who inherits the estate. But where he does not pay the debts in the name of the deceased, but in his own, thinking that he himself owes the debts, he can then, if he desires to do so, bring suit against the parties to whom he paid them. If he cannot collect them, the party who obtained the inheritance must pay them to him, for it is but proper and just that he should bear the burden of paying the debts who enjoys the benefit and the advantage of the inheritance.

LAW XXXVII.

Where One Party Pays Another a Debt Which He Does Not Owe, He Can Recover It With Its Rents and Profits.

Where a party pays something which he does not owe, and it is of such a nature that profit is derived from it, it should be returned, along with said profit, to the party who paid it. We also decree that where the party to whom the payment was made sells or loses said property, if, when it was paid to him, or even afterwards, he acted in good faith in receiving it, thinking that he was entitled to it; if he sold it he should refund the price which he received to the party who paid him, but if he lost it through death or accident, he will not be bound to pay for said property. If when he received it in payment, or afterwards, he acted in bad faith in doing so, being aware that he was not entitled to it; in this case, whether he loses or sells it, he will be obliged to pay for said property the just price which it is worth, with the approval of the court.

LAW XXXVIII.

Whether the Party Who Receives a Slave in Payment Should Emancipate Him, or Not.

Where one man gives a slave to another in payment of an obligation which he was not bound to pay, and the party who receives him in this way afterwards emancipates him, said emancipation will be valid. But if when he received him, or afterwards up to the time that he emancipated him, he acted in bad faith, knowing that he had no right to said slave, he will be obliged to pay the estimated value of the slave to his master. If he acted in good faith when said slave was given him in payment, thinking that he was entitled to him, he will in this case, not be bound to pay his appraised value, since he emancipated him with the understanding that he belonged to him; but he must transfer to the party who gave him said slave in payment, all the rights which he has in said slave, by reason of his emancipation.

LAW XXXIX.

Where a Party Who Owes One of Two Things Pays Both of Them, Which of Them He Can Recover, and Which He Cannot.

Where one man promises another to give him one of two things, speaking as follows; "I promise to give you a horse or a mule;" or designating any other property whatsoever in this way, and it happens that after this he gave erroneously both the things which he mentioned, thinking that he owed them both; he can demand whichever one he pleases to be returned to him, if both of them are living, but if one of them is dead, he cannot demand that the surviving one be returned.

LAW XL.

A Party Who Does Any Work for Another, Thinking That He Is Obligated to Do It When He Is Not, Can Collect the Price of the Same.

Men sometimes think that they are bound to perform certain services, when they are not obliged to do so. For this reason we decree that where an artisan performs labor for another, thinking that he is under obligations to do so; as, for instance, when he builds a house, a ship, etc., which said party or anyone else has need of, and after he has performed said labor it is ascertained that he was not bound to have done it; he shall be paid by the party for whom it was done the price which the said building or ship would have cost if some other workman, as good as he, had built it.

LAW XLI.

Where One Man Releases Another from a Contract Which He Made With Him, in Consideration of Something Else Which He Binds Himself to Give or Do, and Where the Party Does Not Give It or Fulfill His Obligation, Which of Said Agreements He Can Demand Shall Be Observed.

Where one man releases another from a contract which he made with him, by reason of which he was obliged to give him something or perform some act for his benefit, in such a way that by said release the latter binds himself anew to give him something else, or perform some other service for him; and he who was released from the first contract does not comply with what he promised in the second, the other party has the choice, either to make him perform what he last promised or to demand that he carry out the first contract in the way which he was bound to do before he was released; and the latter cannot avoid doing so by stating that he has already been released from the first contract, since he does this in violation of what he consented to give, or do according to the second contract, in consideration of said release.

LAW XLII.

What Bequests Can Be Revoked After They Have Been Made.

Where anyone has been appointed executor by the will of another, for the purpose of paying bequests contained in said will, and he pays those he finds contained therein; and the will is subsequently set aside for some lawful reason, as, for instance, because it was forged; or because the party who made it could not make a will, or grant any bequests according to law; or because it was revoked by another will subsequently executed; we decree that the party entitled to inherit the property of the maker of said will, has the right to demand said bequests of the parties to whom they were paid, and that the latter shall be bound to surrender them.

LAW XLIII.

A Party Who Receives Any Property in Consideration of the Performance of Some Act, Must Return Said Property If He Does Not Do What He Promised.

Men occasionally give property to others, by way of payment, by an agreement which they enter into in consideration that they receive something from them. This would be the case where one man pays another a sum of maravedis, or gives him anything else whatsoever, in consideration that he

will emancipate a slave of his who is under his control. Wherefore, we decree that since he has received payment in a contract of this kind, he will by all means be bound to do what he agreed to or to return to the other party what he received from him, as well as make reparation for all damages and losses which he sustained by his not complying with what he promised. What we decree in this case applies to all others in which men receive something in payment, in consideration of some service which they promise to render.

LAW XLIV.

Those Who Receive Money in Consideration of their Going Upon Missions Must Return the Same If They Do Not Go.

Lords, or other men sometimes send persons on missions, and furnish them money for their expenses, and it happens that, after they are prepared to depart, and have received said money they are prevented from going; or those who send them change their minds; or the messengers become ill, or are hindered by inclement weather, as, for instance, by inundations or other obstacles of this kind. Wherefore, we decree that where their departure is prevented by any of the aforesaid obstacles, and the money received by said messengers has not been expended, they must return it to the parties who sent them. If it has all been expended in providing things necessary for the journey, none of it should be returned, but if all has not been expended, they must return the remainder. Where the party who desires to go on a mission changes his mind, after he has received the money for his expenses, he must return the whole amount, whether he has spent said money or not.

LAW XLV.

Where a Party Emancipates a Slave for Something Which Is Promised Him, It Should Be Paid to Him.

Where a party who has a slave emancipates him, in consideration of a sum of maravedis, or of anything else which another promises to give him, the emancipation will be valid; and if, after this, the other party refuses to comply with the contract he entered into, he can be compelled to pay the appraised value of said slave, as well as the amount of damages and losses which the other party sustained because he did not pay him what he was bound to do. The oath of the party who liberated the slave shall be believed in determining the value of the latter, as well as the amount of the damages and losses; the judge of the district having previously made an estimate of the same. What we have stated in this law concerning a slave applies to all other contracts made by men with one another, by which one man is bound to perform some service, and the other to give some property, or to pay a sum of money.

LAW XLVI.

A Party Who Pays Money or Gives Property to Another in Consideration of Some Service to Be Performed by Him, Can Demand Said Property or Not, If the Party Does Not Do What He Promised.

Where one man pays another maravedis or other money, or gives him anything else, stating particularly that he does so in consideration of some service which he is to perform for him; as, for instance, if he pays him that he may act as his advocate or accompany him somewhere, or for any reason of this

kind; and when he made said payment he stated specifically why he did so, and the other party does not comply with his contract, or render the service for which he received said money; the former has a right to demand of him what he gave him, and the latter will be obliged to return the same. But if when he paid him, he did so with the expectation that he would perform some service for him, thinking in his mind that, in consideration of what he gave him, he would accompany him on some journey, or render him some other service, or would be a better friend of his; not stating specifically the reason why he gave him said money; and he does not perform what the other party thought in his heart that he would do for him, he cannot demand what he gave him, nor will the latter be obliged to return it. For, since he did not indicate or state any reason why he paid him said money, it is understood that he did so with the intention of giving it to him unconditionally, and therefore he has no right to demand it afterwards; although he may allege that he was induced to give or promise him said money, because he thought he would render him some service or would give him something else in return.

LAW XLVII.

A Party Who Receives Property in Payment for Some Base Purpose Must Return the Same.

Men now and then enter into contracts with one another for motives which are base, improper, and contrary to law; and for the reason that said baseness sometimes is manifested only on the part of the party who gives the property, and at others on the part of him who receives it, and because occasionally both parties are involved, we desire to explain what difference exists between them. We decree that the baseness affects only the party who received the payment or accepts the promise, and when something is offered him in consideration that he will not steal, or kill some one, or will not commit sacrilege or adultery, or any other of these offenses, which every man is bound according to both nature and law to avoid doing, he should by all means return what he received for this reason. If he has not been paid the promise made to him should be revoked, for it is a very outrageous thing for any man to receive payment for not doing what he himself is naturally bound to avoid.

We also decree that where a man has placed his property in charge of another, or loaned or hired it to him, and the party who received it of him in this way, refuses to return it unless he is paid something for doing so, and the other, at the time, gives him something, or promises it to him; the latter will be bound to return it, or to release him from the promise which he made on that account, because it is a great act of baseness to pay a man for something which he is obliged to do according to law. We decree that the same rule shall apply where one person steals the child of another, or his slave, or anything else which belongs to him, and refuses to return it unless something be paid him; for whatever he receives under such circumstances he will be bound to return, even though he does not wish to do so.

LAW XLVIII.

Whether a Party Who Pays Something to Be Released from Captivity Can Afterwards Demand It, or Not.

Where a man has been taken captive, or is a prisoner in the hands of enemies or robbers, and some one comes to him and says that if he will give him something, he will liberate him from said imprisonment; the same

captive will be bound to keep any contract which he makes in this way if the other party complies with what he promised. If he pays what he agreed to he cannot afterwards demand it, except where the party who receives the ransom was a companion of the other who took him prisoner, or was present at the time, or assisted or advised that he should be taken; for then he will be entitled to demand and recover what he gave under such circumstances. What we have stated in this law concerning the captivity and imprisonment of a man, applies also to all other property which anyone gives or promises in order to recover what he was robbed of, or what was stolen from him.

LAW XLIX.

When a Party Is Induced by Force or Fraud to Promise Some Money, and He Makes Payment of the Same, Being Able Lawfully to Avoid Doing So, He Cannot Afterwards Claim It.

Where a man is aware that a contract by which he made a promise to another, was base, and that he had a right to defend himself from complying with it; and if, after this he makes payment, we decree that he has no right to demand the money, and if he does, the other party will not be bound to return it to him. We also decree that the same rule shall apply where one person promises to give something to another in consideration of a fraud committed by the latter; or where violence is employed; or where he is afraid that some injury will be done him; for the party will not be bound to comply with a promise made under these or similar circumstances. If, however, he afterwards, of his own accord, pays or gives what he promised, he should not, and cannot subsequently make a demand for the same.

LAW L.

A Woman Who Is Aware that She Cannot Marry a Man, Has No Right to Demand of Him What She Gave Him.

Where a woman knows that she cannot marry a man, between whom and herself a marriage contract exists, for the reason that he is her relative; or because she has another husband; or for some other reason which is of such a character that she cannot legally marry him, and he is not aware that any impediment exists between them and marries her; if she gives him anything as a dowry, although the marriage may be set aside for one of the reasons aforesaid, she cannot claim what she gave him as her dowry, nor will he be bound to return the same to her, because she was guilty of a very base action in knowingly contriving to marry a man with whom she could not legally be thus united; and therefore she cannot demand of him what she gave him. This is an instance in which the base conduct is solely on the side of the party who gives the property. And what we stated in this law concerning marriage is also understood to apply to all other cases of this kind, where the base action is committed by the party who gives the property, and not by the other.

LAW LI.

Where a Man and Woman Marry, Both Being Aware That They Have No Right to Do So, What They Give One Another Shall Be Forfeited to the King.

Where parties marry, and both the man and the woman know that an impediment exists between them on account of which they cannot legally be joined in wedlock; and each gives the other something as a dowry, or a marriage gift; and the marriage is annulled for the reason that it was contracted

contrary to law; we decree that under these circumstances neither of them has any claim against the other for what they gave on this account, nor can they recover the same, because both parties are guilty of turpitude; but we decree that said gifts shall be forfeited to the royal treasury, except where both are under twenty-five years of age; for then, although the marriage is not valid, both have an excuse on account of their minority which will enable either of them to recover what they gave the other as a dowry or a marriage gift. We decree that the same rule shall apply where persons, through mistake and ignorantly, contract a marriage like the one aforesaid, although they are over twenty-five years of age; for if the marriage is annulled after the mistake becomes known, each can recover from the other what was given by reason of said marriage.

LAW LII.

Where a Party Gives Anything to a Judge to Induce Him to Render a Decision In His Favor, It Shall Be Forfeited to the Royal Treasury.

Where one of the parties to a suit gives a sum of maravedis, or any other property whatsoever, to a judge to induce him to render a decision in his favor, even if he who makes said gift has the better right in the suit, or to the claim, than the other party, he cannot afterwards demand what he gave, nor should the judge retain what he received, but we decree that it shall be forfeited to the royal treasury, in the following way, namely; if the claim relates to money or any other property whatsoever, movable or immovable, and sentence involving the loss of life or limb is not concerned, the judge must pay three times the amount of what he received, lose his reputation and his position, and remain forever infamous. The party who gave him said gift, although his claim may be just, must lose it on this account, and both of them shall be punished in this way because both are guilty of base conduct; for the judge, without receiving anything, was bound to decide justly, and the other party, without giving anything, would have been able to obtain his rights. But where the claim relates to something by which the death of a person, or loss of limb may result, the judge shall forfeit all his property, personal as well as real, to the royal treasury; and after this he must be banished forever to some island, as we stated in the Title concerning Judgments, in the laws which treat of this subject.

LAW LIII.

Where Anything Is Given to a Woman to Induce Her to Commit Wickedness With Her Body It Cannot Be Demanded of Her, Although She May Not Comply with What She Promised.

Where a man gives money or other gifts to a woman of good reputation, for the purpose of inducing her to commit wickedness with her body, although she may promise to do what he asks, and accepts the money or the gifts for this purpose; nevertheless, if she does not desire to do what she promised, he cannot demand of her to return him what he gave her, nor will she be bound to return it. This is the case for the reason that the base action involves him because he gave said gifts, and her because she received them. Therefore, since both parties are guilty of turpitude, the one in possession of the property given for this purpose has a better title to it than the party who gave it. The same rule applies where a man gives money to some bad woman in order to lie with her, for after he has given it he cannot claim it, since he alone was guilty of baseness, and therefore he should not recover it; for although a bad woman commits a great sin in lying with men, she does not do so in accepting what is given her, and for this reason in accepting it there is no baseness on her part.

LAW LIV.**A Party Who Gives Anything to Avoid Discovery Can Afterwards Demand It.**

Where a man commits adultery, homicide, theft, or any sin of this kind, and, through fear of discovery, gives something to another party as an inducement not to betray him; although the act was wicked and improper and he was very base to commit it, nevertheless, he is not guilty of turpitude in giving what he did to avoid the danger to which he was liable, if he were discovered. For this reason we decree that he can demand what he paid, for it is a well known fact that every man should endeavor, as far as he can, to avoid running the risk of death or of bad reputation. The party, however, who receives the property for such a purpose commits an act of great turpitude, and this is understood to be the case for two reasons. First, because if he desires to free him from death, he should do so from the natural affection which one man should entertain for another, and not for any reward. Second, because he obstructs the course of justice, and sells it so that it cannot be administered, since he receives a reward for concealing a malefactor. Wherefore we decree that he must return what he received in this manner to the party who gave it to him, and if the former made a promise to give him something, he will not, under such circumstances, be bound to keep it.

TITLE XV.

How Debtors Can Surrender Their Property When They Are Unable to Pay What They Owe, and How Transfers Maliciously Made by Debtors of Their Property Can Be Set Aside.

Debtors sometimes abandon their property seeing that they cannot pay what they owe with what they have in their possession. Wherefore, as in the preceding Title we explained how payment should be made by those who are able to do so, we desire to speak here of others who abandon their property when they have not the means to make payment. We shall explain what kinds of debtors those are, who, for a reason of this kind, can surrender their property; in whose presence they should do this; in what way and for whose benefit it should be done; what effect a surrender of this kind has; and what punishment a party who refuses to pay what he owes, or to surrender his property, should receive. We shall also treat of all other matters relating to this subject, and we shall especially speak of those persons who maliciously dispose of their property with the desire to cause their creditors to lose the debts which they owe them.

LAW I.

Debtors Can Surrender Their Property When They Are Unable to Pay What They Owe, and Before Whom and in What Way This Should Be Done.

Every man who is free, and is under his own control or under that of another, and who has not the means to pay what he owes can surrender his property, and he should surrender it in the presence of a judge. A debtor can make a surrender of this kind himself, or by his attorney, or in writing, by acknowledging the debts which he owes; or when a decision has been rendered against him, and not before; and if he surrenders his property in any other way, said surrender will not be valid. He should relinquish said property to the parties to whom he is indebted, stating that he has not the means with which to make payment. The judge should then receive all the property of said debtor which he surrenders for this reason, except the linen clothes which he wears, and he should leave him nothing else, except where he is a father or a grandfather, or some other relative in the ascending line, who is under an obligation to pay something to one of his descendants; or where he is the son, or relative in the descending lines, who is under an obligation to give something to one of those from whom he is descended; or where the party is a man who owes something to his wife; or where she is a wife who owes something to her husband; or where he is a man who owes something to a slave that he has emancipated; or where he is an emancipated slave who owes his master something; or where one of the partners composing a partnership, holding their property in common, owes one of the other partners; or where he is a man who has been sued in court on account of a gift which he had made to another party. In any of the instances aforesaid the judge can leave any one of the parties sufficient to live upon in comfort, and he should order the balance of the property to be sold at auction, and deliver the price obtained for the same to the debtors aforesaid.

LAW II.

The Property Surrendered by a Debtor Should Be Divided Among Those to Whom He Is Indebted.

Where the debts owed by a party who surrenders all his property are of the same kind or description, the judge should divide among his creditors the maravedis for which said property was sold, giving to each of them, more or

less, according to what he is entitled to. But where the debts are not all of one kind, for the reason that some of them have priority over the others, as, for instance, where they were previously contracted; or where some other rights existed in the property, in the way we explained in the Title concerning Pledges, then such debts should be paid first, although nothing may remain to be paid on the others. Where, however, the debtor who has surrendered his property in this way says, before all of it is sold, that he desires to recover it in order to make payment to his creditors, or to defend himself in court against them, then we decree that none of his property shall be sold, but that he shall be heard.

LAW III.

What Effect a Surrender Has, When Made by a Debtor of his Property on Account of a Debt Which He Owes.

The surrender made by a debtor of his property, of which we spoke in the preceding laws, has such force that afterwards the debtor cannot be summoned, and is not bound to answer in court those to whom he is indebted; except where he has made such great profits that he can pay all his debts, or a portion of them, and still have enough on which to live. Although those who surrender their property can defend themselves against their creditors, so as not to answer them in court, as aforesaid; nevertheless, their sureties cannot, for this reason, set this up as a defense, but they will be bound to make payment of the balance due on said debts for which they became sureties, even though the principal debtors have no means with which to do so.¹

LAW IV.

What Punishment a Party Deserves Who Refuses to Pay His Debts or to Surrender His Property.

Where a decision has been rendered against any one, ordering him to pay the debt which he owes to another party; and he refuses to do so, or to surrender his property, as we stated in the preceding laws; the judge of the district should put him in prison on the demand of him who is entitled to pay-

¹ The Twelve Tables granted the debtor thirty days after maturity of the obligation in which to satisfy the claims of his creditors, and if this was not done within that time he could be arrested and imprisoned. After sixty days of confinement, if the debt was not discharged, the creditor had a right to reduce him to slavery. Where there were several creditors, they could sell the debtor and divide the price. "*Si pluribus, propter aes alienum, addictus fuerit, tertius nundinis, ita illi permittitor, ut, si velint, debitorem suum in partes secare possent.*" (Leg. XII Tab. III-X.)

The proceeding described in the text is the *cessio bonorum* of the civil law, which recognized no distinction between insolvency and bankruptcy. When this was made by a debtor he could avoid imprisonment, but he still remained liable for the unpaid balance due his creditors; who, in case he afterwards obtained property, could attach it, but were not allowed to deprive him of the means of subsistence. A difference of opinion seems to have prevailed among the Roman authorities as to the liability of the debtor for subsequent acquisitions. "*Is, qui bonis cessit, si quid postea adquisierit, in quantum facere potest, convenitur. Sabinus et Cassius putabant, eum, qui bonis cessit, ne quidem ex aliis, quibus debet, posse inquietari.*" (Corp. Jur. Civ. Dig. XLII-III-4.) The assignment of his property by a debtor presupposed the absence of fraud in everything relative to the transaction.

In France, it was formerly required of every debtor who made an assignment for the benefit of his creditors that he should wear a green cap provided by the latter, and in case of refusal he was severely punished. This mark of opprobrium, which added ignominy to misfortune, and was distinctly provocative of public contempt as the peculiar garb of the mediaeval Jews, was in use until the middle of the eighteenth century. This was also the law in Scotland, which prescribed a parti-colored costume of brown and yellow, that made the unfortunate who had honestly surrendered his property even more conspicuous, and was enforced as late as the reign of William IV.

The Spanish Code authorizes an assignment which releases the debtor from liability to an amount equal to the value of the property transferred. "*El deudor puede ceder sus bienes a los acreedores en pago de sus deudas. Esta cesión, salvo pacto en contrario, sólo libera a aquel de responsabilidad por el importe líquido de los bienes cedidos.*" (Cód. Civ. de Esp. IV-I-4, Art. 1175.)

The statutes of England and the United States provide for assignments for the benefit of creditors, to commissioners or trustees. Most of the States also have laws regulating the surrender of property by insolvent persons. At common law, a claim involving the recovery of a debt or damage by suit could not be assigned, as it was essential that the object transferred be actually in existence. In equity, however, the rule is different, and a right based upon a contingent interest existing wholly in expectancy may be turned over to a creditor for his benefit.—Ed.

ment, and keep him there until he pays what he owes, or surrenders his property. And if, while he is confined in prison, he wastes all or a portion of his property, although he may be willing to surrender it he should not be heard, except where, by giving security, he binds himself to return it in the condition in which it was when he was imprisoned.

LAW V.

When a Man Is a Debtor to Several Persons and Requests Them to Wait for Payment of His Debts, and Some of Them Consent, and Others Do Not, What Course Should Be Pursued.

Where a man is indebted to several persons, and, before he surrenders his property, calls them together and requests them to give him an appointed time within which to pay them, and all of them do not agree to grant him said time, he should have the time agreed upon by the majority of his creditors, although the others may be unwilling to agree to this. We decree that by the majority shall be understood those who hold the larger interest in said debts. Where a disagreement arises between the creditors, some being willing to grant the debtor time, and others saying that they will not consent, but that he must pay, or surrender his property; then, if the debts are equal in amount and the creditors equal in number, the wishes of those who are willing to grant him time should prevail; for the reason that it appears that they are induced to do this through the pity which they have for him. Where the debts are equal in amount and the creditors unequal in number, whatever the majority of the parties desire should prevail.

LAW VI.

Where a Man Is Indebted to Several Persons and Asks Them to Remit a Portion of His Debts, and Some of His Creditors Consent to This, and Others Do Not, What Course Should Be Pursued.

Where a debtor requests those to whom he is indebted before he surrenders his property to them, to remit a portion of what he owes them, stating that, if they do, he will pay them the balance, and a disagreement arises between them, some being willing and others not; the wishes of those who are willing to remit a part of the debt should prevail and be respected, just as in all the matters which we explained in the preceding law with reference to the request for time. We also decree that although one of the persons to whom he owed something may not have been present when the others remitted a portion of the debts, their act shall, nevertheless, be valid, and he himself alone has no authority to revoke it; except where the amount of the debt to which he was entitled is larger than that of all the others, for, in this case, his rights will not be prejudiced by anything which they did in his absence.

We also decree that where creditors who are entitled to receive anything from their debtor release him from any portion of the debt, and another party, in whose favor a portion of the property of said debtor was especially encumbered, or who held any part of the same in pledge, was not present when this release was made, he shall not be affected by any release made by the others, and all his rights to what was encumbered in his favor, or pledged to him, shall remain unimpaired.

LAW VII.**Where a Debtor Disposes of His Property to the Injury of Those to Whom He Was Indebted, a Transfer of This Kind Can Be Set Aside.**

We declare that a personal debtor is one whose person only, and not his property, is bound for the payment of a debt. It happens sometimes that a debtor of this kind, after a judgment had been rendered against him in court ordering him to pay his debts, and the judge has directed that his property be delivered, alienates all of it, so that nothing belonging to him can be found to be delivered to those entitled to the same; therefore, we decree that the parties who are entitled to the delivery of said property can cause a transfer of this kind to be set aside within a year from the time when they are informed of it, for the reason that it is understood that where a party disposes of all his property in this way he does so maliciously and fraudulently. We decree that the same rule shall apply where a debtor, during his lifetime, gives away any portion of his property to another, or bequeaths it by will; for if those to whom he is indebted cannot be satisfied and paid with the remainder, a donation or bequest of this kind can be set aside in the way we mentioned above.

If he does not dispose of said property by giving it away or bequeathing it by his will, but sells it, or exchanges it, or bestows it as a dowry, or pledges it; we decree that if it can be proved that the party who received said property in any of the ways aforesaid knew that the debtor was making this transfer maliciously and fraudulently, the transfer can be set aside within the term we mentioned above; except where the party who received the property for any of the reasons aforesaid was a minor. In a case of this kind he will not be obliged to return said property unless they refund him what he paid for it, although it may be proved that he was aware of the fraud; but where fraud in the transfer is not established, as aforesaid, and no action is brought within the time we mentioned above, a demand cannot afterwards be made that the transfer be set aside on this account.

LAW VIII.**The Purchase of the Property of a Debtor Made Against the Prohibition of His Creditor Can Be Set Aside.**

Men sometimes venture to purchase property belonging to parties who are in debt to others, although those entitled to the debts, or their attorneys or stewards, forbid them to do so. For which reason we decree that in a case of this kind, or in another similar to it, where the other property remaining in the hands of the debtor is not sufficient to pay the debt, a transfer of this kind can be set aside within the time we mentioned in the preceding law.

LAW IX.**Where a Debtor Owes Several Persons, and Payment Is Made to One of Them, It Cannot Be Set Aside.**

A debtor who owes several persons is sometimes more inclined to favor one than the others, and, for this reason, it happens that, before a delivery is made of his property, he pays his debt to the party whom he likes the best. In a case of this kind we decree that although the other property which he has may not be sufficient to pay the debts of the other creditors, they cannot compel the favored party to return what he received in payment from the hands of his debtor.

We decree that the same rule shall apply where payment is made before the debtor surrenders his property. But where he pays the debt after delivery

has been made, or he has surrendered his property, whether he does so voluntarily or through compulsion by the court; in this case the other creditors have the right to demand that what the favored creditor received shall be returned and added to the other property which he surrendered, and that the entire amount shall be divided among said creditors in the way which we mentioned.¹

LAW X.

Concerning a Debtor Who Flees from the Country Because He Is Unable to Pay What He Owes.

Where a man flees from the country because he cannot pay the debts he owes, and one of the parties to whom he is indebted, knowing that he has absconded, follows him with the intention of apprehending him and taking what he is carrying away; and the said debtor is found in some uninhabited place, or where there is no magistrate or judge, the creditor can then seize him and all that he is carrying away with him. If, however, he should find him in a place where there is a judge or magistrate, then he should not himself seize him, but he should ask the judge of the district to do so, and the latter will be obliged to comply. Everything found in possession of the debtor can be retained by said creditor on account of the debt which he owes him, to the amount which he is entitled to receive; and he will not be obliged to share the same with the other creditors, but if he secures more than his debt amounts to he must surrender it to the other creditors of said debtor.

LAW XI.

The Property of a Debtor Which Has Been Fraudulently Transferred, Must Be Returned, Along with the Rents and Profits of the Same.

Property which has been maliciously transferred by a debtor with the intention of defrauding the party to whom he was indebted, must be returned in the same condition in which it was before said transfer was made, along with any rents and profits belonging to it at the time the party transferred it, and any others which may have accrued from the day when suit was brought for said property in court until a decision was rendered against the party in possession of the same; the expenses incurred on account of the crops, or by reason of any improvements of said property, having been deducted. All profits arising from said property, however, from the day when it was transferred until suit was brought for its recovery in court, will belong to the party who purchased the property.

LAW XII.

Releases Made by Creditors to Their Debtors, Through Malice, Should Be Revoked.

There are men who sometimes, through malice, release debts which are owing to them in order to defraud their creditors. Wherefore, we decree that no release made by such persons to their debtors shall be valid if the parties whose

¹ In Spain, an insolvent debtor is obliged to file a petition in bankruptcy, and he is, thereafter, absolutely incapacitated from managing any of his property. (Cód. Civ. de Esp. IV-XVII-1, Art. 1913, 1914.) The French Law prescribes the equitable distribution of the goods of a bankrupt, without preference of creditors, except where there exists among them legitimate causes for such preference. (Cod. Civ. de Fr. III-XVIII-2, Art. 2093.) Preferences in these countries are also in general dependent upon priority of lien. In the absence of a system of bankrupt laws forbidding it, a debtor in England or the United States, where he makes a *bona fide* assignment of his property in trust, has a right to prefer one or more creditors to the others. Where statutes regulating bankruptcy proceedings are in force, an act showing favoritism to creditors carries with it the presumption of fraud. This doctrine also applies to assignments made under Codes of France, Spain, and Italy.—Ed.

debts are released are cognizant of the fraud. Where a creditor fraudulently gives a release of a debt from whose payment he desires to free the principal debtor, and to hold another party as surety for the same; and the surety pays the debt, the latter being aware of the fraud and the principal debtor not being cognizant of it; in this case the release will not be valid so far as the person of the surety is concerned; but we decree that he shall be bound to pay the entire debt if it is ascertained that he has the means to do so, and if he has not, then the amount which cannot be recovered from the property of the surety can be collected from the principal debtor. We also decree that where the debt of the principal debtor is released, he being cognizant of the fraud while the surety is not aware of it, the surety shall then be released from said debt, and the principal shall be obliged to pay the same just as if he had not been released.

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